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** Included in Forty-fifth Report (Third Lok Sabha) of the P.A.C. (196

PUBLIC ACCOUNTS COMMITTEE
(1965-66)

Shri R. R. Morarka—*Chairman*

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3. Shri Ram Dhani Das
4. Shri Gulabrao Keshavrao Jedhe
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21. Shri Niranjan Singh
22. Shri Atal Bihari Vajpayee.

SECRETARIAT

Shri H. N. Trivedi—*Deputy Secretary.*

Shri R. M. Bhargava—*Under Secretary.*

2730 (Aii) LS—2.

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Forty-sixth Report on the Audit Report (Civil) on Revenue Receipts, 1965. In this Report the Committee have dealt with (i) Income-tax (ii) Other Revenue Receipts (Chapters IV and V of the Audit Report).

2. The Audit Report (Civil) on Revenue Receipts, 1965 was laid on the Table of the House on the 12th March, 1965. The Committee considered the Audit Report (Chapters IV and V) at their sittings held on the 19th and 27th July, 12th, 19th, 20th and 21st October and 10th November, 1965 and 21st January, 1966. A brief record of the proceedings of each sitting has been maintained and forms part of the Report (Part II*).

3. The Committee considered and finalised the Report at their sitting held on the 8th March, 1966.

4. The Committee have appointed a Sub-Committee to undertake a detailed examination of the operation of the various export promotion schemes during the period 1957—1964 with reference to para 88 of the Audit Report. The Committee would present a separate Report on this subject.

5. A statement showing the summary of the main conclusions/recommendations of the Committee is appended to the Report (*Appendix* XIV). For facility of reference these have been printed in thick type in the body of the Report.

6. The Committee place on record their appreciation of the assistance rendered to them in their examination of these accounts by the Comptroller and Auditor General of India.

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They would also like to express their thanks to the Officers of the Ministries of Finance (Department of Revenue), Food and Agriculture (Department of Agriculture), Home Affairs, External Affairs and Transport and Aviation, and Delhi Administration, for the co-operation extended by them in giving information to the Committee during the course of evidence.

NEW DELHI;
March 10, 1966.

Phalguna 19, 1887 (*S*).

R. R. MORARKA,
Chairman,
Public Accounts Committee.

I

INCOME TAX

Audit Report on Revenue Receipts, 1965

Results of test audit in general, para 59, *page* 52.

In the course of test audit carried out during the period from 1st September, 1963 to 31st August, 1964, an under-assessment of Rs. 438.60 lakhs was noticed as follows:

	(In lakhs of rupees)
(a) Under-assessments in respect of which the Ministry have accepted the audit objections and have replied that necessary rectification action has been taken or is being taken	251·49
(b) Under-assessments which have been accepted by the Ministry but which cannot be rectified having become time-barred	9·22
(c) Under-assessments in respect of which action has yet to be taken by the Ministry *viz.* cases in respect of which the Ministry have not yet sent their reply. (January 1965)	177 89

Of the 260·71 lakhs, under-assessment to the extent of Rs. 169·98 lakhs were noticed in 362 cases.

1·2 The test audit revealed cases of over-assessment also as under:

(a) Over-assessments in respect of which the Ministry have accepted the audit objections and have replied that necessary rectification action has been taken or is being taken .	19·92
(b) Over-assessments which have been accepted by the Ministry but which cannot be rectified having become time-barred	0·53
(c) Over-assessments in respect of which action has yet to be taken by the Ministry *viz.* cases in respect of which the Ministry have not yet sent their final reply (January 1965)	7·30

Besides these, several defects in following the prescribed procedure came to the notice of Audit

1.3. Referring to the figures of under-assessment and over-assessment as pointed out in the Audit Para in the preceding two years and in the year under review, the Committee desired to be furnished with a statement showing how much of the under-assessment of tax pointed out by Audit and accepted by Government in the Audit Reports of 1962, 1963 and 1964 had since been realised by Government. The Chairman, Central Board of Direct Taxes promised to furnish the information. The note* furnished by the Ministry is at Appendix I. From the note, the Committee find that the information furnished is incomplete in as much as it refers to 22 commissioners of I.T. only. **The Committee would like to be furnished with complete information.**

1.4. The Committee enquired what special steps had been taken to improve the working of the Income-tax Department and the internal audit organisation. The Chairman, Board of Direct Taxes stated that the strength of the audit parties had been increased by the addition of one more UDC for each audit party and 2 more LDCs. for each of the Chief Auditors' office in Bombay, Delhi, Madras, Gujarat and U.P. A refresher course was being given to the ITOs. to enable them to have an uptodate knowledge of income-tax law and the Finance Bill every year. Instructions had also been given to take appropriate action against erring officers and members of internal audit party. Further instructions had been given to the later to give priority to the checking of all company assessments irrespective of amount of income and of all other cases having an income of over Rs. 20,000. This would eliminate a large number of mistakes involving bigger amounts of tax.

1.5. In reply to a question, the witness stated that the scope of internal audit was extended a year ago and the audit now done by them is co-extensive with the audit conducted by Revenue Audit.

1.6. The Committee enquired as to the number of I.T.Os. against whom action was taken for under-assessment. The witness stated that in 2 cases, they were censured; in 124 cases they had been warned. He added that in some cases the warnings were kept in the confidential rolls.

1.7. Referring to the recommendation made by P.A.C. in para 3 of their 28th Report (Third Lok Sabha), the Committee enquired whether the information asked for therein had been received. The witness stated that the report had been received except from one

*Not vetted by Audit.

charge. It showed that there were 51 cases in which the same ITO was responsible for mistakes in more than one case commented upon by audit.

1.8. The Committee asked how it took 12 months to get factual information from the Commissioners, as the Report was presented in October, 1964 while the reply that the information was being collected was received on 11th October, 1965. The Member (Income-tax) stated that the reason for the delay was chiefly the transfer of officers from one Commissioner's charge to another. In reply to a question, the Chairman, Board of Direct Taxes stated that the information was awaited from Delhi charge.

1.9. Asked to explain the position regarding cases of under-assessment in respect of which action was yet to be taken by the Ministry, the witness stated that out of 10,344 cases for rectification, only 132 cases were still to be scrutinised and decisions taken. The amount involved in these 132 cases was Rs. 76.12 lakhs. The Chairman, Board of Direct Taxes informed the Committee that in some cases the records were held up with the appellate authorities in connection with the assessee's appeals or writ petitions. The witness added that there were already standing instructions to the Commissioners that wherever the cases were likely to get time-barred they should reopen them and then the question of accepting or not accepting the objections will be considered by the Board.

1.10. The Committee are glad to note the steps taken to improve the working of the Income-tax Department and the internal audit organisation. They trust that with the enlargement of the scope of internal audit, its effectiveness would improve. The Committee would suggest that the Ministry should consider the feasibility of maintaining in the Central Office or in the Commissioner's office a register showing the nature of audit objections, the officers responsible, the tax effect and the action taken on cases detected by Revenue Audit. Such a register would help the Board as well as to pursue and settle the cases objected to by Revenue Audit at one place. It would also help in keeping a watch over cases which are likely to get time-barred with the passage of time.

1.11. The Committee regret to note that the information desired by them in para 3 of their 28th Report has taken the Board 12 months to collect and is still incomplete. This gives the impression that the Commissioners do not act promptly on the instructions of

the Board. The Committee hope that steps would be taken to collect the factual information forthwith and supplied to the Committee.

1.12. From the note* (Appendix I) furnished by the Board of Direct Taxes, the Committee observe that sums of Rs. 15.83 lakhs, Rs. 57·61 lakhs and Rs. 59·83 lakhs were reported to have been recovered out of the under-assessment pointed out in Audit Report for the years 1962, 1963 and 1964 respectively. The Audit pointed out the under-assessment to the extent of Rs. 1.21 crores, 1.19 crores and 2.29 crores in the Audit Reports of 1962, 1963 and 1964 respectively. The Committee feel that the Deptt. has not been quite prompt in settlement of the cases of under-assessment pointed out by Audit. During evidence the Committee were informed that still there were 132 cases involving a sum of Rs. 76.12 lakhs in respect of which action had yet to be taken by the Ministry, though more than 12 months had elapsed. The Committee feel that there is a danger of some of these cases getting time-barred. The Committee desire that the Board should first clearly decide whether the audit objections raised on different cases of under-assessment are to be accepted and if so, demands should be raised well in time in order to prevent these cases from getting time-barred. They desire that the Commissioner of Income-tax and the Board should keep a watch over the cases of under-assessment, so that the amounts under-assessed are realised promptly. In this connection, the Committee were concerned to learn that the work-load of I.T. officers had further increased in 1964-65. The average disposals from I.T.O. in 1964-65 was 1293 cases as against 1003 cases in 1962-63. The Committee would also like to reiterate the recommendation made by them in para 3 of their 28th Report regarding reducing the work-load of income-tax officers with a view to obtaining the optimum efficiency and also the desirability of investigating in detail the cases involving an under-assessment beyond a certain amount.

Errors and Omissions attributable to carelessness and negligence—para 51, *pages* 53-54.

Sub-para (*a*)

1.13. In the re-assessment of a private limited company for the assessment year 1958-59 for the purpose of including in the total income certain dividends which had escaped assessment, the Income-tax officer took the figure of dividends at Rs. 6,637 instead of the correct figure of Rs. 6,63,746. This resulted in a short levy of tax of Rs. 1,66,257 in the case of the company. This mistake also affected the assessment of a charitable trust to which the assessee company had sold the relevant shares, resulting in an excess refund of

*Not vetted by Audit.

Rs. 1,72,154. Thus there was a total short levy of tax on account of the mistake committed by the Income-tax Officer to the extent of Rs. 3,38,411. The mistakes were not detected by the Internal Audit Party of the Department when it checked the case in June, 1964. The Department has agreed to take necessary rectification action.

1.14. Asked to explain the case mentioned in the sub-para, the Member (Income-tax) stated that this was really a case of putting the decimal point at a wrong place. Instead of 6,63,746 it was wrongly shown as 6637.46. The Chairman, Board of Direct Taxes added that the UDC of the ITO's office had been warned. The I.T.Os. explanation had been accepted considering that his record was very good otherwise and the mistake was inadvertant. The explanation given by the internal audit party had not been accepted and they had been warned.

1.15. The Committee enquired whether, the amount involved being very big, any investigation was made by the Board to see whether the mistake was really due to inadvertence, as stated, or there was some collusion between the UDC and the ITO. The witness stated that the Commissioner went into the case to find out whether there was any *malafide* and he came to the conclusion that the mistake was due to inadvertence.

1.16. The Committee enquired whether the ITO did not realise that there was something wrong when, in this particular year due to the mistake of decimal point, the income assessed on that company turned out to be so low as compared with previous years. The Member (Income-tax) stated that so far as the normal income was concerned, that continued to be the same. This was the addition made on account of the legal evasion practised by the company which was added under Section 44-F. The witness added that the original calculation was made by the UDC but because of the pressure of work the ITO failed to check it, as he was supposed to check all items above Rs. 1 lakh.

1.17. The Committee asked whether the Board had considered the desirability of doing away with the paise and rounding the figures upto the nearest rupee. The Chairman, Board of Direct Taxes stated that this suggestion would be considered.

1.18. The Committee enquired as to the present position ragarding the rectification action. The Member (Income-tax) stated that assessments had been rectified in the cases of both the company and

the trust, but the amount had not been collected because the assessee company had gone in appeal on the ground that the provisions of section 44-F were not applicable to the facts of the case. So far as the mistake in calculation was concerned, that had been rectified and the demand notices for Rs. 1,66,257 and Rs. 1,72,154 in the case of company and the Trust respectively have been issued.

1.19. The Committee regret to note that this calculation mistake committed by the UDC escaped notice of not only by the I.T.O. but also that of Internal Audit Party. It appears that even the Internal Audit did not check arithmetical calculation which was one of their main duties to do, as otherwise this should have been detected by them and it was only when this case came to the notice of the Revenue Audit that the under-assessment came to light. The Committee feel that all the persons involved, in this case, viz., the UDC, ITO and the Internal Audit Party were negligent. The Committee note that the UDC and the Internal Audit Party had been warned in this case and that the mistake in calculation has been rectified and the necessary demands issued. They would, however, recommend that learning from this case the Board should examine the desirability of eliminating the paise and introducing the system of rounding off of the amounts to the nearest rupee in such cases in order to minimise the risk of wrong calculation in future.

Sub-para (b).

1.20 The assessment of an oil company for the year 1957-58 was originally completed on a total income of Rs. 4,02,25,132. Subsequently the department detected that an income of Rs. 75,119 had escaped notice. Re-assessment was accordingly made on 26th November, 1962 on a total income of Rs. 4,03,00,251. In May, 1962, an excess allowance of depreciation in this case was noticed by Audit and ultimately reported in paragraph 25(a) of the Audit Report, 1963. While the excise depreciation allowance was withdrawn by reopening the assessment on 13th June, 1963, the assessment was based on the income of Rs. 4,02,25,132 determined at the time of original assessment instead of the revised correct total income of Rs. 4,03,00,251 determined subsequently. Consequently the escaped income of Rs. 75,119 which was reassessed on 26th November, 1962, again escaped assessment, resulting in an under-assessment of tax by Rs. 46,198. The Department has since rectified the assessment at the instance of Audit and recovered the amount of under-assessment of tax.

1.21. The Committee desired to know whether the responsibility for the lapse mentioned in the sub-para had been fixed and if so, with what result. The Chairman, Central Board of Direct Taxes stated that the mistake in this case occurred since at the time of rectification the records containing the reassessment proceedings completed earlier were not available and as the ITO was being pursued to rectify the mistake, he did so on the basis of the income orginally assessed, as shown in the old section 34 proposal form, not knowing that another re-assessment had been completed in the meantime. In this case the records were constantly moving, from place to place, because there was an appeal to the tribunal and the Appellate Tribunal was a different office.

1.22. The Committee enquired how the ITO came to make the rectification without waiting for the records and what was the reason for this hurry in coming to a conclusion. The witness stated that in deference to the desire of the P.A.C. to rectify the mistake pointed out by them (Para 46, Twenty First Report, P.A.C.—Third Lok Sabha refers), the Board had asked the ITO to take action immediately and the latter rectified the mistake hurriedly.

1.23. In reply to a question whether this case was looked into by the inspecting Assistant Commissioner or the internal audit party, the Member (Income-tax) stated that the internal audit party had not examined it, because at that time instructions had not been issued enlarging the scope of internal audit. These instructions had now been issued in January, 1965 and there would be no such mistake hereafter as company assessments irrespective of the quantum of income would be checked by the internal audit party.

1.24. The Committee are surprised to note that in this case, the I.T.O. took the hasty step of trying to rectify the mistake without reference to records and in the process committed another mistake. While the Committee note that the Deptt. has since recovered the amount of under-assessment, they would impress upon the Board to instruct the officers to exercise greater vigilance and caution. They also trust that with extension of scope of internal audit, such cases will not recur.

Sub-para (c)

1.25. A company had debited a sum of Rs. 2·06 lakhs to its profit and loss account on account of depreciation for the previous year relevant to the assessment year 1959-60. The Income-tax Officer while making the assessment computed the depreciation allowance, admissible to the assessee at Rs. 3.08 lakhs and added the amount to the income returned by the assessee without first taking from that

income the amount of Rs. 2.06 lakhs already charged by the company. The assessee was thus allowed a total depreciation of Rs. 5.14 lakhs instead of the admissible amount of Rs. 3.08 lakhs resulting in an excess allowance of Rs. 2·06 lakhs. It was also noticed that the company was allowed from 1956-57 onwards extra shift depreciation allowance equal to normal depreciation without restricting it to the maximum permissible limit of 50 per cent. The extra allowance made on this account for the assessment years 1956-57 to 1959-60 total upot Rs. 1.78 lakhs. Thus, on account of the mistakes committed there was an excess allowance of Rs. 3 84 lakhs in this case resulting in a short-levy of tax to the extent of Rs. 1.70 lakhs. The assessment has since been rectified and the amount of under-assessment collected.

1.26 The Committee enquired as to when this assessment was completed, whether the case had been looked into by the Assistant Commissioner/Internal Audit party and whether action had been taken against the officer responsible for the lapse. The Chairman, Board of Direct Taxes stated that assessments had been much before the Audit Report was available i e. one in 1958 and the other three in 1962 and this case was not looked into by the internal audit party. The 1957-58 assessment was inspected by the Assistant Commissioner, whose explanation had been called for about a week or ten days ago and was still awaited. **In this connection the Committee would like to reiterate the recommendation made by them in para 29 of their 28th Report (Third Lok Sabha) that since calculation of depreciation allowance is complicated, the Deptt. should give adequate training in this respect to the staff in company circles so that such mistakes are eliminated.**

1.27 **The Committee would also like to be informed whether I.A.C's explanation has been received and whether it has been found to be satisfactory.**

Failure to apply the provisions of the Finance Acts properly—para 62, pages 54-55

Sub-para (a)

1.28. Super-tax payable by a company on its total income is subject to rebates allowed at varying rates depending upon the class of the company and the source of its income. Where, however, the income of a company includes certain inter-corporate dividends of the nature specified in the Fifth Schedule to the Income-tax Act, 1961, such income was exempt from super tax though included in the

total income for purposes of rebate. While allowing rebates admissible under the provisions of the Finance Act, such rebates are to be calculated on income other than such inter-corporate dividends included in the total income, to ensure that the company does not secure inequitable advantage of getting rebate of super-tax at rates higher than that to which it was subjected to. In the case of four limited companies of a group, this position was overlooked by the Income-tax Officer who allowed rebates from super tax on the total income of the companies for the years 1962-63 and 1963-64, leading to the allowance of excessive rebate of super-tax to the extent of Rs. 3,14,551.

1.29. The Committee enquired what was the intention behind making an income wholly exempt from taxation and including an item of income in the total income but affording relief at the average rates. The Chairman, Board of Direct Taxes stated that the intention was to ensure that the other non-exempt income was charged to tax at the full rate applicable to such total income. But unfortunately the words 'average rate of tax' were used in the Act and therefore that came to more than the desired quantum. It was for that reason that the Act had been amended later on. The witness added that as the law stood then the officer was right in giving the relief he gave. The Board had not intended to give the relief; it was given only because the drafting of the section was wrongly done.

1.30. The Committee enquired whether there were any other assessees who got this unintended benefit. The witness stated that the information was not available.

1.31. In reply to a question as to the time-lag between the original Act and the amended Act, the witness stated that the 1961 Act came into force from 1962; hence the time lag was 3 years, i.e. from 1962 to 1965.

1.32. The Committee asked as to when it was realised that the language of the Act did not carry out the intentions of the Board. The witness stated that they would have to look into the records relating to the need for the amendment and from there they could find out when it was realised.

1.33. The Committee enquired whether the ITO concerned interpreted the law in the same way in all the cases or in a different way in other cases and whether his *bona fides* had been looked into. The witness stated that that aspect of the matter had not been gone into, but they would now look into it.

1.34. The Committee desired to be furnished with a note about the way the ITO concerned interpreted the law in the four cases during the period he was in charge of those cases. The note furnished by the Ministry is at Appendix II*.

1.35. While the Committee observe from the note that the relief given by the ITO was strictly according to the letter of the law, as it stood then, and he applied it uniformly in all cases, they feel that the time-lag between the enforcement of the original Act and its amendment for the purpose of removing the defect in the wording of the relevant section was inordinately long.

Sub-para (b)

1.36. Two companies having certain income which was exempt from tax were allowed rebate from corporation tax on their exempt income at the maximum rate. In addition, a rebate at 30 per cent was also allowed on the total income including this exempt income, with the result that the two companies not only did not pay any tax on their exempt income but also obtained an irregular refund on such income at 30 per cent, resulting in a short levy of tax in these two cases to the extent of Rs. 1,11,341. The case of one of these companies had been audited by the Internal Audit Party which failed to detect this error. Rectification orders have since been passed and the amount of Rs. 1,11,341 is stated to have been recovered.

1.37. The Committee enquired what was the explanation given by the official concerned for committing the error mentioned in the sub-para and how the Internal Audit Party missed the mistake in calculation. The Chairman, Board of Direct Taxes stated that the ITO's explanation was that he could not check the calculation due to pressure of work. The witness further stated that the Internal Audit Party had pointed out this mistake in the middle of 1962 and the Revenue Audit pointed it out in January, 1964. The mistake could have been rectified before it was pointed out by Revenue Audit. The explanation offered had not been accepted and a warning was issued to the concerned officer by the Commissioner. But the Board did not consider a mere warning to be adequate in such cases. The witness added that of the two cases, one was gone into by internal audit and the assessment had been revised and tax collected. The other case had not been checked by internal audit.

1.38. The Committee consider it a serious matter that although the Internal Audit Party checked one of the two cases involving an under-assessment and pointed out the mistake in middle of 1962,

*Not vetted by Audit.

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*Not vetted by Audit

necessary action to rectify the assessment was not taken until it was again pointed out by Revenue Audit in January, 1964. The Committee hope that suitable steps would be taken to ensure that prompt action is taken to rectify mistakes as soon as they are detected by any agency.

Sub-para (c)

1.39. Investment Trust companies were exempted from super tax in respect of dividends received from a company which has paid super tax on its profits. In the case of an Investment Trust Company which received dividend from another company having agricultural income, the dividend income received was exempted from super tax even though the company declaring the dividends did not pay super tax on its profits on account of its agricultural income being totally exempt from tax. The incorrect exemption has resulted in an under-assessment of tax Rs. 28,200 for the assessment years 1958-59 to 1962-63. Action for the years 1960-61 to 1962-63 has been taken for rectifying the assessments. But, for the assessment years 1958-59 and 1959-60, the Ministry have stated that action is time-barred resulting in a loss of revenue to the extent of Rs. 10,726.

1.40. The Committee desired to know whether the assessment for the years 1958-59 to 1962-63 had been completed by the same ITO and what were the circumstances that led to the omission. The witness stated that there were four different ITOs, one each for each year. He added that the demand raised for 1960-61 was Rs. 6,036 and for 1961-62 it was Rs. 5,738. Both these had been recovered, but the demand for 1962-63 amounting to Rs. 2,892 had not yet been recovered.

1.41. The Committee regret to note that the incorrect exemption given in this case resulted in an under-assessment of tax to the extent of Rs. 28,200 and that 4 Income-tax officers did not detect this under-assessment. It appears that the assessments were made in a routine manner by all the officers. This also resulted in a loss of revenue of Rs. 10,726 for the assessment years 1958-59 and 1959-60 on account of time-bar.

The Committee would also like to be informed of the recovery of Rs. 2,892 relating to the demand for the year 1962-63.

Incorrect determination of income from house property—para 64, page 56.

1.42. House property constructed after 31st March, 1950 is eligible for deduction of half of the municipal taxes paid in determining the income for income-tax purposes. It was noticed that in the case of

an assessee who had constructed the house property after 31st March, 1950, the full amount of municipal taxes was allowed contrary to law. Further, mistake was also committed in giving deduction for vacancy allowances. On account of these mistakes the income of the assessee was under-assessed by Rs. 49,672 resulting in the short-levy of tax of Rs. 11,567. Action to rectify the mistakes has been taken by the Department.

Explaining the circumstances that led to the wrong assessment mentioned in this para, the Chairman, Board of Direct Taxes stated that it was due to the fact that the method followed in the past assessment which was wrong, had been repeated. He added that the full amount had been recovered. The Committee pointed out that such mistakes arose because various kinds of classifications and divisions were made in regard to the levy of taxes in the taxation laws. The frequency with which the taxation laws were being changed introducing new provisions led to these mistakes being made by ITOs who were unable to cope with the changing pattern of the tax laws.

1.43. The witness agreed that this was so to some extent, but stated that in a growing economy, when taxation was also made an instrument for enforcing or encouraging certain other plans of Government the Act must necessarily change.

1.44. The Committee pointed out that if more money was needed, the rates could be changed and that there was no need to change the basic structure of taxation laws everytime.

1.45. The Committee note that the mistake in this case has been rectified and the full amount due recovered. They would, however, like to point out that such mistakes are mainly due to the complicated nature of the tax laws which are subjected to changes every year. These changes are confined not only to the rate of tax, but even the structural changes are made frequently. The Committee appreciate that in a growing economy appropriate changes in tax structure sometimes do become inevitable. They, however, feel that the basic change in the scheme of the Act must be avoided as far as possible. They also feel that an attempt should be made to simplify the taxation law as far as possible and that the changes in the taxation laws should thereafter be kept to the minimum necessary.

Failure to compute the income from business properly—para 65, *pages* 56-57.

Sub-para (a)

1.46. The Profit and Loss Account of an assessee contained a debit item of Rs. 1,08,727 representing reserves for Indian staff bonus and

labour bonus. Such a reserve is an inadmissible item of expenditure and should have been added back to the income of the assessee. Even the assessee in one of his letters to the Income-tax Officer pointed out that this appropriation towards reserve was not an admissible deduction. The Income-tax Officer, however, at the time of assessment did not add back this inadmissible item. Thus the tax on the same to the extent of Rs. 67,000 escaped assessment. The Ministry have stated that recovery is being made.

1.47. The Committee enquired as to the explanation given by the ITO for not disallowing the debit item even when his attention had been specifically drawn by the assessee regarding the inadmissible nature of expense and whether the additional demand had been recovered. The Chairman, Board of Direct Taxes stated that the demand which was reduced in appeal from Rs. 66,867 to Rs. 26,801 had been recovered. As regards his explanation, the ITO had noted in blue pencil that the item of reserve was inadmissible, but at the time of computation of the income, he missed to include it while totalling. He added that it might be appreciated that in this case, he had added Rs.* 40 lakhs on other items. The total income of the company assessed was Rs. 2,33,00,000.

1.48. The Committee hope that care will be taken to avoid such mistakes in future.

Sub-para (b)

1.49. A business carried on by an individual as his proprietary concern was taken over by a firm consisting of himself and his daughter as partners. In connection with this transfer of ownership, gratuity payments amounting to Rs. 19,210 were made by the individual in the accounting year ended 31st December, 1960 and these were allowed as deduction in computing his total income for the assessment year 1961-62. The gratuity amount is not allowable as deduction in this particular case as it was necessitated in connection with the closing down of the business and the transfer of ownership and not for the purpose of carrying on business and earning profit. The Ministry have accepted this view but have stated that action to rectify the mistake cannot be taken as it has become time-barred. Thus, there has been a loss of revenue amounting to Rs. 13,784.

*According to Audit the figure was Rs. 29 lakhs.

1.50. The Committee pointed out that as the mistake of deduction towards gratuity allowed in the assessment was first pointed out in audit on 29th August, 1963, if quick action had been taken by the ITO on receipt of the audit objection and the mistake was brought to the notice of the Appellate Assistant Commissioner, before he disposed of the appeal which was pending before him on that date, the Appellate Assistant Commissioner would have enhanced the assessment and the loss of revenue of Rs. 13,784 could have been avoided. The Committee enquired as to the dates on which the local audit memo was received by the ITO and the assessment was made. The Chairman, Board of Direct Taxes stated that the local audit memo was received on 11th October, 1963 whereas the appeal had been passed, the Commissioner was precluded from taking action under Section 263. The Member (Income-tax) explaining further stated that that was the reason why Government had recently amended Section 154 to take power to rectify mistakes by ITOs even where an order had been passed by the Appellate Assistant Commissioner.

1.51. It is however learnt from Audit that the local audit Memo was issued on 29th August, 1963 and the draft report was discussed on 9th September, 1963. The appeal was disposed of on 28th September, 1963... The report received by the I.T.O. on 11th October, 1963 was the formal inspection report. Therefore there was adequate time for the I.T.O. to ask for enhancement on the basis of the local audit memo which he had received in August 1963 itself before the A.A.C. disposed of the appeal. **The Committee regret that this has not been done. This failure reflects an apathy on the part of the I.T.Os. in regard to point raised in audit.**

1.52. In reply to a question whether any special steps had been taken by the Department to expedite scrutiny of audit objections and set in motion timely rectificatory action, the witness stated that the time taken in scrutiny of audit objections was not responsible for an assessment getting time-barred. He added that no such case had come to their notice where recovery became time-barred due to late action on audit objection.

1.53. The Committee hope that with the amendment of Section 154 of the Income-tax Act, such losses of revenue would be avoided, as it confers powers on the Government to rectify mistakes by ITOs even where an order has been passed by the Appellate Assistant Commissioner.

Sub-para (c)

1.54. An assessee who had taken certain stone quarries on lease was required to pay a royalty to the State Government at 4 annas per cubic foot of stone extracted or Rs. 1 lakh per annum as dead rent, whichever was more. While completing the assessments for the years 1958-59 and 1959-60 on 4th May, 1961 and 30th April, 1962 respectively, the payment on account of royalty was treated as revenue expenditure instead of capital expenditure as decided by the Supreme Court in April, 1960 in a similar case. Though there was time for rectification for the assessment year 1958-59 till 3rd May, 1963, no action was taken by the department in this regard, even though Audit pointed out this in January, 1963. Consequently the rectification had become time-barred resulting in a loss of revenue of Rs. 65,740. The assessment for the year 1959-60, however, has been reopened by the department and the additional tax realisable would be Rs. 65,504.

1.55. The Committee desired to know the reason for allowing the amount on account of royalty as deduction when the Supreme Court had laid down in Pingle Industries Case that such expenditure was of capital nature. The Chairman, Board of Direct Taxes stated that there had been instructions and circulars from the Board that such royalty and idle rent were to be allowed as revenue expenditure.

1.56. In the Pingle Industries Case, the circumstances were a little different. The finding was that the payment though periodic in fact was neither rent nor royalty but a lump-sum payment in instalments for acquiring capital asset. In this case it was rent and royalty. So it was thought that that decision (Pingle Industries case) would not be applicable in this case. Later on, the Rajasthan High Court relied on this decision (Pingle Industries case) and said that it would apply. But at the material time, the Board's instructions were in the field and the officers were following them; from the Pingle Industries case, the Board thought that there was perhaps no need for any change in the instructions and it was done under the bonafide belief that it was allowable. The Rajasthan High Court case was still pending in the Supreme Court. The witness added that so far as collection and rectification were concerned, the assessment for 1959-60 had been rectified and an additional demand for about Rs. 65,000 had been raised but not yet collected. The assessment was not checked either by the Inspecting Assistant Commissioner or by the internal audit party.

1.57. The Committee enquired why the section was not amended after the judgment of the Rajasthan High Court. The witness stated that the amendment had been kept pending till the Supreme Court gave its decision. He added that in the meantime the Rajasthan High Court judgment held the field.

1.58. The Committee enquired as to the intentions of the Board, whether they wanted to treat it as revenue expenditure or capital expenditure. The witness stated that the law did not say which expenditure would be capital and which would not be capital. It would depend on the facts of each case.

1.59. The Committee asked whether it was not possible for the Board to clarify the position once for all so that difference assessees in the country might not be taxed differently for the same type of income. The witness stated that legislation had been put off because they were really waiting for the decision of the Supreme Court as to whether in the case of royalty it should be allowed as a deduction irrespective of the terms of the agreement or whether the terms of agreement in each case had to be seen. He added that uniformity had been ensured in all the charges by issuing instructions that the cases should be reopened for the assessment year only and it should be disallowed as capital expenditure till the Supreme Court decision came. But realisation was not being enforced and in that way uniformity had been ensured.

1.60. The C.&A.G. pointed out that it was rather unusual that on the one hand the Board's circular said that royalties and dividends should be regarded as revenue expenditure, but on the other, the Commissioner made a reference to the High Court that it should be treated as capital expenditure. That showed lack of coordination between the Board and the Commissioners. The witness stated that he would have to look into the file to know the circumstances in which the reference was made, because references were made by the Commissioner after getting approval from the Board. The Committee desired to know whether the question of revising the Board's instructions of 1952 in the light of the Supreme Court's decision in the Pingle Industries case was considered. The witness stated that it was obviously not considered. He added that the Supreme Court's decision in Pingle Industries case was not exactly on the same point.

1.61. The Committee pointed out that the instructions contained in the Board's circular of 1952 had been treated as withdrawn in the circular issued in 1965 and that the same could have been done 5 years

earlier *i.e.* in 1960. The Committee enquired why action was delayed by the Deptt. in view of the fact that the audit objection was raised in January, 1963. The Member (Income-tax) stated that the objection was received only on 20th March, 1964 while an enquiry was made in 1963. He added that in this case the Commissioner could not have reopened the assessment because of the earlier instructions. He had to wait for the Board's directions in the matter.

1.62. The Committee note that an appeal on the judgment of the Rajasthan High Court in regard to the question whether the payment on account of royalty is to be treated as expenditure of revenue or capital nature had been preferred and it is learnt from audit that the Supreme Court has since disposed of the appeal reversing the Rajasthan High Court judgment and that the Central Board of Direct Taxes have also issued revised instructions inconformity with the Supreme Court's judgment.

1.63. The Committee would like to know the circumstances under which the Commissioner of Income-tax made reference to the High Court that royalties and dividends should be regarded as capital expenditure, when the Board's circular was to the contrary.

Mistakes in computing depreciation and development rebates admissible—para 66, pages 57—59.

1.64. Under-assessments arising from incorrect computation of development rebate and depreciation has been on the increase in spite of the fact that special attention had been drawn to this type of mistake in the Audit Reports 1963 and 1964. The relevant figures for these two years are as follows:—

Year	No. of cases in which mistakes were detected in audit	Total amount of under-assessment
		Rs.
1963	574	29.13 lakhs
1964	678	33.83 lakhs

During the year under review such mistakes have been found in 2,089 cases involving an under-assessment of tax to the extent of Rs. 75.97 lakhs.

1.65. The Committee referred to their earlier recommendation made in para 24-a of the 28th Report (Third Lok Sabha) and enquired what steps had been taken in pursuance of that recommendation. The Member (Income-tax) stated that on 18th July, 1964 the extracts of paras 55 and 56 of the Audit Report (Civil) on Revenue Receipts,

1964 in question pertaining to development rebate and depreciation together with comments of P.A.C. on them were sent to all the Commissioners in a circular letter by the Board. They were asked to conduct a review of the cases in the city of Bombay and as a result of that review, the mistakes discovered were rectified. He added that total number of cases covered by the review was 6,822. The number of cases in which mistakes were detected was 912, involving an amount of Rs. 24·23 lakhs. The number of cases in which mistakes had been rectified was 611. The Chairman, Board of Direct Taxes stated that for the balance instructions had been issued to expedite the matter.

1.66. The Committee pointed out that there were still 209 cases involving an amount of about Rs. 23·36 lakhs in taxes to be realised. The witness stated that reminders were issued to the Commissioners about a week or 10 days ago to expedite these cases immediately.

1.67. The Committee pointed out that the audit report, 1965 indicated that both the number of cases of under-assessment and the amount involved were increasing as compared with the previous 2 years. The witness stated that every remedial action possible was being taken.

1.68. The Committee dealt with in some detail the mistakes resulting in wrong computation of depreciation and development rebates in para 24(a) and in para 29 of their 28th Report (Third Lok Sabha). They regret to note that the number of cases in which mistakes were detected in computing depreciation and development rebates admissible, increased to 2,089 involving an under-assessment of tax to the extent of Rs. 75·97 lakhs as against 574 cases in 1963, involving an amount of Rs. 29·13 lakhs and 678 cases in 1964, involving an amount of Rs. 33·83 lakhs. Even during evidence the witness stated that a review of such cases in the city of Bombay has brought out mistakes in 912 cases out of a total of 6,822 cases reviewed. The amount involved in these 912 cases was Rs. 24·23 lakhs. In view of the result of review in Bombay the Committee suggest that the Board should get special review conducted in all other charges also. They would like to be informed of the results of such a special review.

1.69. Since the numerous mistakes take place in calculation of the development rebate and depreciation allowances which result in an under-assessment, the Committee suggest that (a) suitable instructions containing comprehensive details should be issued to all

the income-tax officers for calculation of these rebates and allowances, (b) training should be given to the field staff in making such calculations.

Sub-para (a)

1.70. In the case of a State Electricity Board depreciation allowance was allowed on canal aqueducts, roads, dams, bridges and culverts which do not come under the category of buildings, plant, machinery or furniture. This amounted to Rs. 1,49,876 for the accounting year relevant to the assessment year 1958-59. The under-assessment of tax on this account is Rs. 74,938. Another defect noticed in this case was that extra-shift allowance, which was admissible only upto a minimum of 50 per cent was allowed to the extent of 100 per cent of the normal depreciation allowance, resulting in under-assessment of tax of about Rs. 1,84,410. These mistakes require to be rectified.

1.71. The Committee desired to know how the ITO allowed depreciation on assets which were not entitled to any depreciation and how he allowed multiple shift allowance at 100 per cent instead of at 50 per cent. The Chairman, Board of Direct Taxes stated that in this case which relates to a State Electricity Board audit had not been finalised. So the ITO made a provisional assessment, more or less accepting the figures given by the Board. It was not critically scrutinised as it was made with the approval of the Commissioner just to collect whatever tax it was possible to collect. The witness added that in this case, the assessment was made after obtaining a specific undertaking from the assessee to the effect that he was agreeable to assessment being revised later, though it was not the correct procedure. Asked as to why it was not described as a provisional assessment under the relevant Section, the witness stated that the assessment would have become time-barred if it was not made then. As regards the present position, the witness stated that the assessment has been set aside on appeal and the mistake would be rectified when re-assessment was made on receipt of the audit report.

1.72. The Committee are not convinced by the explanation given by the Department for this error. Where there is a dispute or absence of information in regard to the figures of actual cost of written down value, it is understandable that the figures are taken provisionally. Subject to revision later on. But where a particular asset is not at all entitled to depreciation allowance or extra shift allowance such as those referred to in this case it is not understood

how a provisional depreciation or extra shift allowance was at all given. It appears that the Income-tax Officer had not looked into the nature of assets.

1.73. The Committee note that this assessment has been set aside on appeal. They would like to be informed whether the mistake has been rectified in the re-assessment and tax due recovered.

Sub-para (b)

1.74. Depreciation is admissible at 10 per cent on plant and machinery used in newspapers industry as prescribed by rules framed under the Income-tax Act. A company was, however, allowed depreciation on these assets at the rate of 20 per cent from 1942-43 onwards. When this was pointed out in audit the assessments for the year 1957-58 onwards only could be rectified as rectification for earlier years had become time-barred. The additional demand raised as a result of these rectifications for assessment years 1957-58 to 1959-60 works out to Rs. 1,69,197. The amount of revenue lost on account of time-barred years has yet to be ascertained (January, 1965).

1.75. The Committee enquired as to the approximate revenue lost by Government due to the rectification for the year 1942-43 to 1956-57 having become time-barred. The Chairman, Board of Direct Taxes stated that the information was awaited and might take some time. On being asked how the mistake remained undetected by internal audit all these years, the witness stated that the prescribed rates of depreciation on newspaper machinery was 10 per cent whereas 20 per cent was allowed. Explaining further, he stated that the linotype machinery used in Commercial printing press had different rates. But the same machinery used in Cinematography had a higher rate of 20 per cent and the ITO committed the mistake of copying it. The Committee pointed out that if depreciation was allowed at the rate of 20 per cent the entire machinery would be written off in 5 or 6 years and the succeeding income tax officers should have realised the mistake while calculating depreciation on new plants and machinery. The witness stated that initially a mistake was committed by some ITO and his successors just followed the previous practice without applying their mind to the question. He added that the demand of Rs. 1,67,190 was expected to be realised very soon. The Committee enquired if other presses were also given concession of 20 per cent in depreciation of machinery. The witness stated that he would ascertain whether the same officer had made assessment of similar companies.

1.76. The Committee are greatly surprised to note that the mistake of allowing a higher rate of depreciation on machinery went on undetected for almost 22 years and was noticed only when pointed out by Audit. They would desire that responsibility should be fixed for the loss of revenue resulting from the rectification of the mistake in the assessments earlier to 1957-58 having become time-barred. If depreciation was allowed at 20 per cent as was done by the ITO who originally committed the mistake in 1943, the entire machinery would have been written off in 5 to 6 years and the succeeding ITOs should have realised the mistake while calculating depreciation on new machinery.

1.77. The Committee would like to be informed whether the additional demand raised in respect of assessment years 1957-58 to 1959-60 has since been realised.

Sub-para (c)

1.78. In the assessment of a public limited company for the assessment year 1961-62 the assets on which depreciation was claimed by the assessee were re-classified by the Income-tax Officer. As a result some assets on which depreciation had been claimed by the assessee at 10 per cent with an extra allowance of 5 per cent for double shift working, was found to be entitled to depreciation at 5 per cent only without any further allowance for extra shift. To arrive at the depreciation admissible to the assessee the Income-tax officer deducted 10 per cent of the cost of the reclassified assets from the total claim made by the assessee and added 5 per cent of such cost as the depreciation admissible. In doing so, the extra shift allowance claimed at 5 per cent was lost sight of. This resulted in an enhancement of the loss in the assessment year 1961-62 with a consequential under-assessment of the income in the assessment year 1962-63 to the extent of Rs. 1,28,663. The amount of tax which escaped levy on this account works out to Rs. 64,332.

1.79. The Committee desired to know whether the mistake in under-assessment of tax of Rs. 64,332 resulting from incorrect calculation of depreciation allowance had been rectified; and if so the amount of additional demand raised and recovered. The witness stated that the full amount of the additional demand raised had been collected. He added that the explanation of the I.T.O. in the case was that it was a calculation mistake committed through oversight

1.80. The Committee feel concerned over such costly mistakes committed through oversight by ITOs as occurred in the present case which resulted in non-levy of tax amounting to Rs. 64,332. They desire that the ITOs should be more careful in dealing with assessments involving large amounts of tax with a view to avoiding not only mistakes on points of law, but also those relating to calculations.

Sub-para (c)

1.81. A private limited company had claimed development rebate of Rs. 10,14,038 in the assessment year 1960-61. This included a claim of Rs. 2,23,842 on an asset not wholly used for business. In computing the total income the Income-tax Officer did not disallow the development rebate claim of Rs. 2,23,842 and allowed in entirety the full amount of Rs. 10,14,038 resulting in a short-levy of tax amounting to Rs. 1,00,729 according to Audit.

1.82. The witness informed the Committee that the additional demand raised was Rs. 96,782 and it had been fully recovered. He added that the Inspecting Assistant Commissioner had approved the assessment and had satisfied himself on the point of admissibility of claim regarding the development rebate. But he did not go into the accuracy of the arithmetical computation of the total income.

1.83. The Committee regret to point out that in this case the I.T.O. made a mistake in not disallowing a clearly inadmissible item of development rebate on a certain asset. It is also surprising that although the Imputing Assistant Commissioner checked the assessment, he did not go into the accuracy of the arithmetical computation of income. If the inspection by Assistant Commissioners is to be purposeful, they should, while inspecting the assessments, besides going into the legal points also ensure that the arithmetical calculations are correct, especially in the case of companies, when large amounts are involved.

Irregular set-off of losses—para 67, pages 59-60.

1.84. Under the Income-tax Act, the losses suffered by an assessee in speculation business cannot be set off against profits from other business or against income under any other head. Such loss can only be carried forward for being set off against profits from subsequent speculation business alone. The total income of a registered firm for the assessment year 1961-62 was assessed at Rs. 1,10,670. While

allocating the income among the partners, the speculation loss of Rs. 56,920 suffered by the firm in the same year was wrongly adjusted against the total income and the net income alone was allocated and taxed in the hands of the partners, resulting in an under-assessment of tax to the extent of Rs. 21,505, according to Audit.

1.85. In a note (Appendix III) submitted to the Committee at their instance, the Ministry have stated that the assessment has since been revised, allocating the firm's total income between the partners. The speculation loss has been ignored for this purpose. No additional demand was raised in the case of the firm itself but rectifications in the partner's cases have resulted in an additional demand of Rs. 24,065, which has been collected.

1.86. The Committee asked if the Ministry had enquired into the reasons for the mistake committed by the income tax officer originally. The Chairman of the Central Board of Direct Taxes state that the income of the firm had been correctly computed, but, while allocating the shares, there were two portions which should have been separately shown and by mistake the net position was shown.

1.87. The Committee regret to find that in this case the clear provisions of the income-tax Act were ignored by the Income-tax Officer, resulting in an under-assessment of Rs. 24,065. They hope that such mistakes would be avoided in future.

Irregularities committed while making assessments of firms and partners—para 68, pages 60-61.

Sub-para (a)

1.88. Under the Income-tax Act, interest paid by a firm to its partners is added back to arrive at the total income of the firm and tax is computed on such total income. While allocating the income of the firm among its partners, the interest paid is deducted from the total income and the balance is allocated according to the share of the profits as stipulated in the partnership deed. But the interest amount is added to the total income of that partner to whom it is paid. In one case it was noticed that a total sum of Rs. 1,73,899 paid to the partners as interest was not added back to the total income of the firm with the result that the firm was under assessed. According to Audit the total under-assessment of tax on the firm as weil as in the hands of the partners was Rs. 1,39,605.

1.89 The Ministry have accepted the mistake so far as the firm is concerned and the short-levy has also been realised. As regards

the partners, the Ministry have stated the partners have themselves included the interest in their returns and hence there has been no under-assessment.

1.90. The Committee asked whether the omission on the part of the assessing officer for incorrectly determining the firm's income had been enquired into. The Chairman of the Board of Direct Taxes replied that the I.T.O. had explained that mistake was committed due to rush of work. The officer had been warned for the mistake. In reply to another question the witness stated that the firm had nine or ten partners who had already included the interest in their incomes, and so there was no escapment of tax on that account. The witness added that the additional demand actually came to Rs. 19,300 only. Asked how the internal audit failed to detect the mistake, the witness stated that it was at that time beyond their scope to look into this aspect.

1.91. The Committee takes serious note of such omissions in determination of the income in case of firms. It is unfortunate that even though the department and a system of internal audit, this aspect was outside their scope at that time. The Committee hope that with the extension of the scope of Internal Audit such mistakes will not go undetected by them.

Sub-para (b)

1.92. According to Audit under the provisions of the Income-tax Act, 1922, and the rules framed thereunder, the share income of a partner in a registered firm is assessable as business income, whatever may be the source of that income in the hands of the firm. In the case of seven registered firms, which had income from capital gains, the share income from the firm was not assessed in the hands of the partners as income from business but was assessed as capital gains. As a result of the incorrect classification, there has been an under-assessment of tax to the extent of Rs. 1,20,500 in the case of the partners of the firm.

1.93. In June, 1964, the Ministry of Law had also confirmed the view that the practice followed by the Department in this case was contrary to the provisions of the 1922 Act. The Committee enquired about the correct legal position regarding allocation of share of income under old law. The Chairman of the Board stated that the Department had all along been of the view that the character of income in the hands of the partners was the same as in the hands

of the firm. In 1959, the Law Ministry had also taken the same view that capital gains of the firm should be treated as capital gains in the hands of the partners. But when the Law Ministry were again consulted after receipt of the audit objection they had now expressed a different view *i.e.* the nature of income in the hands of partners changed. Asked if any instructions had been issued by the Board regarding the method to be adopt in this regard, the witness stated that on the basis of the Law Ministry's earlier view, the instructions were issued in October, 1960 in a particular case to the Commissioner of Income-tax Madras that Capital gains of the firm should be treated as such in the hands of the partners. But no circular was issued to all Commissioners.

1.94. Asked whether there was any difference between the language of the old Act and of the new Act, the Member (Income-tax) stated that there was difference in language and a new section had been introduced in the new Act. But the Law Commission who were considering the matter had expressed the view that this section was only clarificatory.

1.95. The Committee asked whether in the present case which involved interpretation of law, the I.T.O. consulted his superior officer before coming to the conclusion. The Chairman of the Board stated that the practice had been in vogue for a long time, and the Income-tax officers had no doubt in their mind that the character of income in the hands of partners did not change. The Committee pointed out that the Law Ministry had stated that it was understood that prior to the enactment of the Income-tax Act, 1961, the practice followed in this regard was not uniform in all circles and some doubt prevailed in the matter. The witness stated that there might have been a couple of cases where a different view taken, but he was not aware of such cases.

1.96. In reply to a question, the Chairman of the Board stated that the latter interpretation of the Law Ministry was based on a mention about "share in a firm" in the form of return of income under the head "business". In other words "share" was included in the category of "business". The Member (Income-tax) stated that the Boards view was based on the general rule of the law that a firm was not distinct from its partners and what accrued to the firm in a particular character accrued to the partners also in the same character. The Chairman of the Board added that they did not knew whether the Law Ministry's view was correct. The C. & A.G. expressed the view that under the income-tax rules the income of the partners

had to be declared *inter-alia* under the head "business, profession or vocation" and there was no mention about the kind of profits. Whatever the type of profits for the registered firm *i.e.*, from speculation, capital gains or other business, there was no difference in the hands of the partners. The Chairman of the Board of Direct Taxes stated their view had always been that the character did not change. In fact they had pointed out this anomaly to the Law Ministry. He further added that how far the latter opinion of the Law Ministry was sound, would have to be considered.

In reply to a question, the Member (Income-tax) stated that sub-section (2) of the new Act provided: "The share of a partner in the income or loss of the firm as computed under sub-section (1) shall for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income."

1.97. In view of the fact that two contradictory opinions have been expressed by the Ministry of Law in 1959 and 1964, the Committee suggest that the opinion of the Attorney General may be obtained.

Pages 60-61, *para* 68 (*c*)

1.98. In the case of a firm which applied for renewal of registration, the Income-tax Officer refused to grant registration for the assessment year 1958-59 on the ground that the application for registration was not signed by all the adult partners of the firm. The firm was accordingly assessed as unregistered firm. But the circumstances which necessitated the refusal of registration for 1958-59 also prevailed during the assessment years 1955-56, 1956-57 and 1957-58 and as such registration for these years should not have been granted by the income-tax officer. Due to incorrectly granting registration to the firm, tax to the extent of Rs. 1·74 lakhs was short-levied according to Audit. As time for rectification action had expired, this amount is a loss of revenue to the Government.

1.99. The Committee enquired about the circumstances in which the incomplete application for renewal of registration was acted upon in three assessments consecutively for the years 1955-56, 1956-57 and 1957-58. The Chairman of the Central Board of Direct Taxes stated that the previous officer had granted registration for the year 1954-55 after satisfying himself about the genuineness of the firm and other legal formalities. The succeeding officer went on renewing the registration without verifying whether the minors had become majors and if so whether or not they had signed the application. All the three assessments were completed by the same I.T.O.

Asked how the application was refused for registration in 1958-59, the Member (Income-tax) replied that this was done on technical grounds as it had not been signed by all the adult partners of the firm and that was one of the requirements. The Income-tax officer in 1958-59 was a different one. The witness, however, added that this should not have been done by officer in view of the Board's liberal policy in the matter. The firm approached the Board later for grant of registration. But, by that time the matter had been referred to the tribunal and the Board did not feel it proper to interfere at that stage. Asked if the registration in the years 1955-56, 1956-57 and 1957-58 was incorrectly granted, the witness replied that it was so if technical defects were taken into account. The witness added that the Board issued instructions in 1961 that if the technical defects were of the nature that could be removed, these should be got removed. Section 185(2) of the Income Tax Act, 1961 also provided that the I.T.O. should not reject the application merely on the ground that the same was not in order, but he should give sufficient opportunity to rectify defects in the application within one month. In the present case the assessments were made in 1956 and 1957 before the issue of the Board's instructions but while allowing registration, the I.T.O. made a mistake in that he did not notice that the minors had become majors, whose signatures should have been obtained.

1.100. On his attention being drawn to harassment to assessees caused due to extreme views taken by officers in certain cases of registration of partnership firms inspite of the liberal provision in the Act, the witness replied that this was not due to any fault of the system but to the rather over-enthusiastic individuals.

1.101. The Committee feel concerned over such omissions of the Income Tax Officers as occurred in the present case in respect of the assessment years 1955-56, 1956-57 and 1957-58. The Income Tax Officer failed to notice that the firm's application for registration was not complete in as much as it had not been signed by all the adult partners of the firm and granted registration for the years without having this requirement fulfilled. What is more serious, although the officer who scrutinized the application for the assessment year 1958-59 did detect the mistake, he took the extreme step of refusing renewal of registration for want of this rather technical requirement and assessing it as an unregistered firm. He should better have asked the firm to get the application signed by all its adult partners. This omission on the part of the I.T.O. resulted in the case going before the tribunal and hardship to the firm.

1.102. The Committee are glad to note that the Income Tax Act, 1961 contains a provision that an I.T.O. should not reject the applications merely on the ground that the same was not in order, but he should give sufficient opportunity to the assessee to rectify defects within one month. The Committee understand that the Board have also issued instructions in 1961 that if the technical defects were of the nature that could be removed, these should be got removed. But what the Committee are anxious about is that this liberalisation envisaged in the income-tax Act and instructions should actually be observed in letter and spirit by the I.T.Os., so that the intention of the Parliament may be implemented and undue hardship to the assesses avoided. The Committee would like the Board to take effective steps to ensure that the spirit of the Act as well as instructions of the Board in this respect are precisely observed.

Irregularities committed while determining the income from capital gains—para 69, page 61.

Sub-para (a)

1.103. Gains arising out of sales of capital assets are chargeable to tax as capital gains but jewellery and furniture held for the personal use of the assessee are not regarded as a capital asset for this purpose. In the case of an assessee the statement of jewellery and ornaments prepared for the purpose of wealth tax assessment for the assessment year 1959-60 included melted gold worth Rs. 1,62,150. The melted gold was sold in the subsequent year for Rs. 1,95,977 resulting in a gain of Rs. 33,827. This gain was not charged to tax by the assessing officer on the ground that it was covered by the exception allowed in the case of jewellery. The non-levy of capital gains tax in respect of the transaction resulted in a loss of revenue of Rs. 9,479 as the relevant assessment could not be reopened due to the operation of time-bar.

1.104. The Committee asked if the mistake had been rectified and if so, what was the additional demand raised and recovered. The witness stated that the additional demand raised was for Rs. 9,479 which was being collected. Asked if any general instructions had been issued on the subject for the guidance of the assessing officers, the witness stated that this was not a case of general nature and so no general instructions had been issued. When jewellery was melted into gold it became bullion and capital gain would accrue, if it was sold. But if the assessee sold jewellery as such, it would be

treated as personal effects, and would be exempted from tax. In reply to a question the Member (Income-tax) stated that even though capital gain might be casual, it was taxable.

1.105. The Committee are surprised how the I.T.O. treated melted gold as jewellery and allowed the exemption from capital gains tax. It was a case of negligence as capital gain even though casual, was taxable. The Committee feel that general instructions should be issued by the Board for the guidance of I.T.Os. to prevent recurrence of such cases.

Para 69 (b)

1.106. An assessee sold in the previous year relevant to the assessment year 1962-63, 2500 shares of a company at Rs. 100 each which was the face value of the shares. The sale was to one of his own relatives. It was, however, found that the value adopted in respect of each share for the purpose of wealth tax assessment was Rs. 192. It was, thus, clear that the assessee had deliberately under-stated the value of his shares in his income-tax assessment with a view to escaping tax on the capital gains. On this being pointed out by Audit, the Department took action to reopen the assessment and has raised an additional demand of Rs. 57,463.

1.107. The Committee asked how the I.T.O. concerned omitted to notice that the assessee had shown an increased value of the share in his Wealth Tax return and whether the two assessments were made by the same officer. The Chairman of the Central Board of Direct Taxes stated that the assessments had been made by the same officer but on different dates. The Income-tax assessment for 1962-63 was made on the 24th December, 1962. By that time the Wealth Tax return had not come; it came in January, 1963. Asked about the previous year's position, the witness stated that that was not known. He added that when the Wealth Tax assessment was made on 25th February, 1963, *i.e.*, after two months, the I.T.O. felt that the market value of the shares was much higher than the sale price disclosed in the income-tax proceedings. So, he forthwith initiated gift tax proceedings, as under the provisions of the Gift Tax Act, a gift was deemed to be made, if the asset was sold at a price less than the market price. But the amount of capital gains tax involved was more than the gift tax. The assessment had been rectified and the capital gains tax had been collected; the gift tax case was pending a decision to see if both the taxes *viz.* capital gains tax and gift tax

were chargeable The demand for capital gains tax was raised for Rs. 57,463, but it was reduced in appeal to Rs. 35,620 which had been collected.

1 108. The Committee are informed by Audit that the wealth tax assessments for the years 1960-61 and 1961-62 were made on the 16th February, 1961 and 7th October, 1961 determining the value of shares at Rs. 167·79 and Rs. 158·85 respectively. These wealth tax assessments were therefore before the I.T.O. who made the income-tax assessments for the year 1962-63. It appears that he did not take these assessments into consideration for charging capital gains tax when the shares were sold.

1.109. The Committee feel concerned about the practice adopted by the assessee in this case to circumvent the levy of capital gains tax while submitting his income-tax return by undervaluing the shares sold to his own relative. In his return for Wealth Tax submitted earlier and subsequently, the shares were assessed at a much higher value (about double the face value). Similar cases of undervaluing assets in income tax returns were reported in para 34(b) of the Audit Report (Civil) on Revenue Receipts, 1963. The Committee suggested that a suitable procedure should be adopted by the Department whereby assessment of both the income tax and wealth tax is done simultaneously so that the I.T.O. should be able to correlate the value of assets disclosed in the two returns.

1.110. The Comptroller and Auditor General informed the Committee that this particular case was brought to his notice by accident. Actually, Government had authorised Audit to do only income-tax audit, and not wealth tax, gift tax or estate duty audit. The Committee asked how these taxes did not come within the purview of Revenue Audit as this should cover all the taxes. The C. & A.G. stated that under the rules the purview of Revenue audit expanded to the extent, the Government specifically authorised him. Government had specifically allotted only income tax.

1.1[illegible]. **The Committee are surprised to learn that Wealth Tax, Gift Tax and Estate Duty which are also direct taxes have not yet been audited by Government for being brought under the purview of Revenue Audit. The Committee feel that this should have been done simultaneously when Revenue Audit was extended to Income Tax. The receipts from these taxes are increasing and it is also necessary to correlate the data given in income tax returns and other taxes returns to detect malpractices of the kind reported in the present case. In view of the singular service rendered by the**

Revenue Audit to the assessment and collection of Income-tax Customs and Central Excise, it is the considered opinion of the Committee that the scope of the Revenue Audit should be suitably extended forthwith so as to include all the central taxes without any distinction and reservation.

Para 69 (c)

1.112. When the assets on which depreciation is allowed is sold, the difference between the sale price and the written down value is treated as a business profit to the extent of the depreciation already allowed. When, however, a capital asset on which depreciation is not allowed is sold, the profit or loss is treated as a capital gain or a capital loss.

1.113. A cotton mill sold certain plant and machinery on which depreciation was allowed and earned a net profit of Rs. 96,020 the whole of which was assessable as a business profit. In the same year, it sustained a capital loss of Rs. 73,355 on the sale of certain investments. The income-tax Officer treated the difference between the two, *i.e.* Rs. 22,665 as a capital gain and levied tax of Rs. 7,139 only at the rates applicable to capital gains. The correct procedure should have been to levy a tax of Rs. 42,310 on the business profits of Rs. 96,020 and to carry forward the capital loss of Rs. 73 355 for being set off against capital gains, if any, earned in the succeeding years. By adopting an irregular procedure there was an under-assessment of Rs. 42,310.

1.114. The Committee asked how the I.T.O. treated a clear item of business profit (Rs. 96,020) as a capital gain. The Chairman of the Central Board of Direct Taxes stated that this profit had been wrongly considered as a capital gain. It had been shown as such by the assessee himself and the I.T.O. failed to check this. The I.T.O. had expressed regret for the mistake. Asked whether the Inspecting Assistant Commissioner checked the case before or after the assessment, the witness replied in the affirmative and added that they could not get his explanation as he had retired. To a question whether the internal audit had checked the assessment, the witness replied in the negative. In reply to a question, the witness stated that the additional demand was for Rs. 46,073 but this was reduced to Rs. 39,907 in appeal and it had been fully recovered.

1.115. The Committee regret to note that in the present case neither the I.T.O. who made the assessment, nor the Inspecting Asstt. Commissioner who checked it, was able to detect that a clear item of business profit was shown as a capital gain. This indicates that scrutiny made by the two officers was perfunctory. The Com-

mittee desire that the officers should be more careful while scrutinizing the accounts of companies, even though these might have been certified by qualified accountants.

Failure to compute properly the total income by applying the provisions of section 16(3) of the Income-tax Act, 1922 corresponding to section 64 of the Income-tax Act, 1961—para 70, pages 62-63.

Sub-para (a)

1.116. According to certain tax avoidance provisions of the Income-tax Act, if a minor child is admitted to the benefits of partnership in a firm in which the father or mother is also a partner, the income of the minor child had to be included in the total income of the parent. On disruption of a Hindu Undivided family in July, 1946, the erstwhile Karta started two firms taking two of his minor sons as partners in one firm and the third minor son as a partner in the other Contrary to the provisions of the Act, the share incomes of the partners were assessed separately instead of being assessed in the hands of the father. As a result of this, a tax revenue of Rs 66,145 was lost to Government for the years 1947-48 to 1951-52 as the time for initiating action had become barred.

1.117. According to Audit, the same defect as mentioned in the Audit para was found in the subsequent assessments i.e. upto 1955-56. Rectification action taken by the Department for the subsequent years (*viz.*, 1952-53 to 1955-56) was held as barred by time by the High Court. The Department was stated to have appealed against this judgment. The Committee desired to know the result of this appeal. In evidence, the Chairman of the Central Board of Direct Taxes stated that appeals were pending. There were nine officers involved in this case out of which two had retired and one expired Asked about the explanation of the officers, for the mistake, the witness stated that all of them had stated that it originated some time before their time. In case of those officers who were still in Department, warning memos. had been placed in their confidential rolls, for it was found that their neglect was more. Asked if this case was looked into by the internal audit party the witness stated that this was looked into by the internal audit party for five years. The Department could not obtain the explanation of the official as he had retired. In reply to another question, the witness stated that the provision for inclusion of income of the minor child in the total income of the parent came into force from 1939 and the mistake in this case came to be committed from 1947-48. On being pointed out that the mistake once committed had been persistently continued for

several years, the witness stated that they had been repeatedly telling the officers not to follow the basis of the earlier assessments, but still this did happen. He urged that this did not mean that the officers did not know the law.

1.118. The Committee regret to note that the same mistake, i.e., failure to apply the provisions of the income-tax Act to assess the income of minors in the hands of parents, was persistently committed by nine Income-tax officers, over a period of eight years from 1947-48 to 1955-56. Once the mistake occurred, the succeeding officers repeated it without independently going into the basis of assessment. It is most unfortunate that inspite of this Board telling their officers repeatedly not to follow the basis of the earlier assessment a mistake like the present one has happened. This shows the routine or casual treatment which is given to the Boards instruction/advice. The Committee suggest that based on the defects noticed in this case suitable instructions may be issued to all I.T. officers to be more careful in such cases. The Committee would also like to know the result of the appeal made by the Department.

Sub-para (b)

1.119. An assessee created four trusts in 1950 and two in 1957 for the benefit of his family including his wives and minor children. From the assessment year 1955-56 onwards the income derived from these trusts by the beneficiaries was assessed separately in the hands of those beneficiaries except in the case of one wife whose income was assessed in hands of the assessee till her death in February, 1955. Audit pointed out that under the law, separate assessments of the wife and minor children were irregular, but in reply the Department contended that excepting one, the other three ladies were not legitimate wives of the assessee and therefore, their minor children were not legal children of the assessee. But a scrutiny of the trust deeds and the relationship mentioned in these documents revealed that the other ladies were also shown as wives of the assessee. Hence, Audit suggested that the income derived from the trusts by these wives and their minor children should be taxed in the hands of the assessee in accordance with the provisions of the Income-tax Act. The Ministry have replied that the necessary rectification action has been initiated for the years 1955-56 to 1958-59 to reassess the escaped income. The tax effect involved for these years is Rs. 9.96,928. It is, however, reported that the assessee has filed a writ petition challenging the Jurisdiction of the Income-tax Officer to reopen the assessments.

1.120. As regards the earlier years, namely 1951-52 to 1954-55, it has been reported that action to revise the reassessments has become time-barred involving a loss of Rs. 38,496

1.121. The Committee asked how the income of the beneficiaries under several trusts was treated for the purpose of assessments for sveral years from the date of creation of the trusts. The witness stated that in 1953-54, this matter was first examined by the Commissioner, as to whether all of the ladies concerned were legal wives of the assessee or 'ladies in position' as they were called then. The officer came to the conclusion on the basis of the materials available at that time that there was only one legally wedded wife and the others were 'ladies in position'. This matter was reconsidered in 1959-60 on the basis of some fresh materials available. It was at that stage that the Law Ministry stated that the circumstances showed that there was presumption of marriage and they were not 'ladies in position' but were wives. The Department then started clubbing up the incomes Asked how the Commissioner's ruling of 1953-54 could be applied to the two trusts created in 1957, the witness replied that the ladies concerned were the same. When it was pointed out that according to the trust deeds, some ladies had been shown as wives, some as 'ladies in position' and some as mistresses, the witness replied that it was in consideration of this inference that the Law Ministry came to the conclusion that they were wives. The witness added that earlier there was a mistake of fact in coming to a finding whether they were 'ladies in position' or wives. There was an error of judgment on the part of the Commissioner. Asked. if, in view of a large amount of revenue involved and complicated nature of trust cases, it was not proper for the Commissioner to refer the matter to the Board. The witness agreed that this should have been done. He added that the officer concerned was probably proceeding on the basis of the facts, where there was no need to refer it to the Board; he could refer a matter involving a point of law to the Board. The witness urged that in the good old days, very few references were made to the Board and the Law Ministry were not consulted.

1.122. The Committee are surprised that in 1953-54 the Commissioner at his own level gave a ruling that the ladies in question were not wives of the assessee but 'ladies in position'. As the case was complicated and unique, without any parallel, and also involved a large amount of revenue, the officer should have referred it to the Board and the Law Ministry. This omission on the part of the officer has resulted in jeopardising considerable revenue (Rs. 38,496)

for the years 1951-52 to 1954-55, the assessments for which have become time-barred, and Rs. 996,928 for the subsequent years 1955-56 to 1958-59.

1.123. The Committee would like to know the outcome of writ petition filed by assessee in the High Court challenging the jurisdiction of the I.T.O. to reopen the assessments for 1955-56 to 1958-59 involving tax effect of Rs. 9,96,928.

Irregular exemptions,—para 71(b), *pages* 63-64:

1.124. The Income-tax Act specifies that rebate on account of insurance premia should be allowed in respect of insurance policies taken on the lives of the assessee or of their spouses only and that the total of the life Insurance premia, General Provident Fund contributions, etc., for which the rebate is allowable should be restricted to 1|4th of the total income or Rs. 10,000 whichever is less.

1.125. It was noticed that in 130 cases test-checked in sixteen commissioners' charges this rebate was incorrectly allowed on:—

(i) insurance policies taken on the lives of the sons and daughters of the assessee;

(ii) premia financed from General Provident Fund:

(iii) premia in excess of the restricted amount of 25 per cent of the total income; and

(iv) amount in excess of the sum claimed.

Under-assessment of tax involved in these 130 cases amounted to Rs. 44,995.

1.126. According to Audit, besides 130 cases mentioned in the Audit para. there were 25 other cases involving a tax effect of Rs. 19,705 wherein similar mistakes were found in Audit bringing the total number of cases to 155 with a tax effect of Rs. 64,700.

1.127. The Committee desired to know the latest position of the disposal of these cases. The Chairman of the Central Board of Direct Taxes stated that out of 149 cases, 137 objections had been accepted, 9 had not been accepted, 2 were partly acceptable and one was pending. The Department had already carried out rectification in 130 cases; in which the demand raised so far was Rs. 44,158 and the amount collected was Rs. 32,850.

1.128. Asked how the mistake regarding rebates to be allowed for insurance were committed by the I.T.Os., the witness stated that there was no complication in the procedure but some times these mistakes escaped the notice of some officers. The Committee pointed out that these insurance rebate cases indicated occurance of a general type of mistake as in the case of depreciation allowance, even though they were not so complicated as the depreciation cases. The witness stated that these 149 cases were uniformally spread all over the country, except in U.P. and Bombay when these numbered 50 and 33 respectively. The C. & A.G. stated that these cases resulted from the examination by Audit of the charges of only 16 commissioners and that too out of a very small number of cases. He suggested if this type of general mistake occurred, some steps would be necessary to simplify the law or the procedure. The Chairman of the Central Board of Direct Taxes stated that the law had been simplified in the last budget and now straight deductions were allowed instead of rebate. The witness expressed the hope that as a result of this, the mistakes would be substantially less in future, if not completely eradicated.

1.129. Asked if any mistakes were detected by the Internal Audit Department, the witness replied that they did not check individual cases, because their number was large and the small amounts were involved in each case.

1.130. The Committee feel concerned to note that even though these cases of allowance of insurance rebate were not so complicated, there appeared to be a general type of mistake committed by the I.T.Os., as judged from occurence of 155 defective cases out of a small number of cases checked in test audit in the charges of 16 commissioners. The Committee hope that with the simplification of the law by providing for straight deductions instead of rebates, the mistakes would be substantially reduced, if not completely eliminated. The Committee suggest that the matter should be kept under review with a view to introducing further simplification in procedure, if necessary. For this purpose it would be desirable that some percentage of cases is checked by the Internal Audit also.

1.131. The Committee asked how in certain cases, rebate was allowed on the amount in excess of the sum claimed, the witness agreed that it was an extraordinary thing and promised to look into these cases. The Committee desired to be furnished with a note showing in how many cases, the amount in excess of the sum claimed was incorrectly allowed, the amount of tax under-assessed and how the mistakes took place. In their note*. (Appendix IV) the

*Not vetted by Audit.

Ministry have stated that there are about 40 cases which fall under this category. Full particulars in respect of these cases have been called for from the Commissioners and their replies are still awaited.

1.132. The Committee find it surprising that in these 40 cases, rebate was allowed on the amount in excess of the sum claimed by the assessees. They hope that these cases will be scrutinized carefully and action taken against the delinquent officers.

Sub-para (c)

1.133. In paragraph 39 of the 28th Report of the P.A.C. (3rd Lok Sabha), two cases were pointed out where under-assessment resulted by working out the figure of average capital employed in new industrial undertakings on an incorrect basis. Similar cases came to the notice of Audit during the period under review also.

1.134. In the case of two companies dealing in dyes and chemicals claiming relief as new industrial undertakings, average profits were added to the average capital employed even though under the method of computation made by the Income-tax Officer the average capital itself had already been taken with reference to all the assets and liabilities of the undertakings as they appeared in the balance sheets. This resulted in short levy of tax of Rs. 4·09 lakhs for the year 1957-58 to 1961-62. As a result of deeming the dividends to have been paid to the shareholders of the companies from out of the exempt profits, which included the inadmissible amount referred to above, excess tax relief to the extent of nearly Rs. 3·92 lakhs was allowed to the shareholders. The Ministry have accepted the mistakes and have stated that rectification for the assessment years 1957-58 and 1958-59 has become time-barred resulting in a loss of revenue of Rs. 33,411. As regards the other years, necessary rectification action was stated to have been initiated.

1.135. The Committee asked how the I.T.O., ignored the comprehensive instructions issued by the Ministry in 1961 while completing the assessment. The Chairman of the Central Board of Direct Taxes stated that the assessments for the year 1957-58 to 1960-61 had already been completed before the Board's circular was received by him. However, the assessment for the year 1961-62 was made in January, 1962, but the point escaped the I.T.O.'s notice. The witness added that the assessments of the two companies had been rectified for all the years except 1957-58 and 1958-59 in one case, because they had become time-barred. The amounts realised in the two cases were Rs. 3,33,279 and Rs. 47,000. The amount involved in the time-barred assessments was Rs. 33,411. The Committee pointed out that the Board's circular of 1961 was only of a clarificatory nature and did not refer to any new law. They asked why the I.T.O. did not follow

the law in the earlier years and, if he had any doubts, why he did not refer the matter to the higher authorities before completing the assessment of a big company like this one The witness stated that the point involved was difficult and agreed that the I T.O. should have referred the matter to the higher authorities The witness urged that sometimes the officers did not appreciate that a point was difficult

1 136 Asked about the position of rectification of the assessments of the shareholders of the companies, the witness stated that necessary action was under way but the exact position was not known. In reply to another question, the witness stated that the internal Audit Party had not checked these cases. Some of these assessments were looked into by the Inspecting Assistant Commissioner, but he did not report anything

1.137 The Committee regret to note that this is another case where although a difficult point was involved, the I.T.O. did not consider it necessary to refer the matter to the higher authorities before completing the assessment of a big company like the one in the present case for the years 1957-58 to 1960-61. What is more regrettable is that even after the Board issued a circular in 1961 containing comprehensive instructions regarding computing of capital employed in an undertaking, the I T.O. made the same mistake in January, 1962 while making the assessment for the year 1961-62 The mistake made in 1961-62 merits serious notice The Committee also view with concern the omission on the part of the Inspecting Asstt. Commissioner who looked into some of these assessments, but did not report anything. But for the point taken up by Audit, a tax revenue of Rs 3·80 lakhs would have remained unrealised in these two cases of companies and Rs. 3·92 lakhs in the cases of shareholders The Committee suggest that the Board of Direct Taxes should take a serious view of such omission and cases involving an under-assessment of tax of Rs 10,000 or above should be investigated in detail with a view to remove any defects in procedure as also to see that no *malafide* was involved They should also fix responsibility for such lapses

1 138 The Committee asked whether, in view of the fact that these mistakes appeared to be common in all circles (two cases relating to Maharashtra had been reported in the Audit Report, 1964 and two cases relating to Gujarat had been reported in the Audit Report, 1965), the Board had considered the question of issuing special instructions to conduct a general review of such cases and carry out rectifications where necessary to prevent loss of revenue to

Government. The witness promised to consider this question very soon. The Committee would like to know the result of this examination.

1.139. In para 39 of their 28th Report (Third Lok Sabha) the Committee had expressed the hope that as a result of introducing refresher course and creating of 36 more company circles, the assessing officers would be fully conversant with the provisions of the Income Tax Act and other intricacies of assessment in regard to companies, So that mistakes are not committed. **The Committee desire that the performance of the Income Tax officers in company circles should be assessed from time to time in order to apply any further correctives.**

Sub-para (d)

1.140. Under the Income-tax Act, 1922 if any business which had paid tax under the Income-tax Act, 1918, is discontinued during the course of any year, the assessee is given an option to substitute the income of the broken period of the year of discontinuance for the income of the year preceding it and get a refund of the difference of tax arising from this substitution. This provision applied to supertax only where the businesss was assessed to super tax for the first time for the years 1920-21 or 1921-22.

1.141. While making the assessment for 1951-52 of three partners of a registered firm which discontinued its business in March 1952, the concession of substitution of the income in the year of discontinuance was given to the assessee and refund was allowed both for income-tax and super tax. As the firm was not assessed to super tax for the first time during the years 1920-21 or 1921-22 the refund of super tax was irregular. The amount of such irregular refund came to Rs. 3·12 lakhs. The mistakes have since been rectified and the irregular refund of Rs. 3·12 lakhs recovered from the assessees.

1.142. The Committee asked how the I.T.O. concerned omitted the basic fact that the assessee was not entitled to relief in respect of super-tax when he issued the refund. The Chairman of the Central Board of Direct Taxes stated that the mistake was not in the I.T.O. failing to appreciate the matter. The point had been mentioned by him in the body of the order itself. But in the end, the refund was wrongly calculated. The witness agreed that the I.T.O. should have checked the calculation of the refund which amounted to more than Rs. 1 lakh in this case. Asked if the refund was checked by the Inspecting Assistant Commissioner, the witness replied that the (IAC) could do so only at the time of inspection and probably that inspection was not taken up. The witness added that instructions had been issued in July, 1964 that in all cases where tax refund as a result of revision of assessment consequent on an

appellate order exceeded Rs. 1 lakh, the I.T.O. should obtain prior approval of the Inspecting Assistant Commissioner.

1.143 In reply to a question, the witness stated that the Deptt. had recovered more than the super-tax relief because they had been contesting that the assessee was not entitled to the relief under Section 25(3) The Department took the case to the High Court and the entire amount of Rs. 4,61,712, including the super-tax relief was recovered.

1.144. The Committee regret to note that although in each of these three cases, the excess refund involved was more than Rs. 1 lakh, the calculation was not checked by the I.T.O. concerned as required under departmental instructions and the mistake remained unnoticed for about 30 months, till it was pointed out by Audit. The Committee hope that the I.T.Os. will strictly observe the instructions issued by the Board in July, 1964 that in all cases where refund granted as a result of revision of assessment consequent on an appellate order exceeded Rs. 1 lakh, the I.T.O. should obtain prior approval of the Inspection Asstt. Commissioner and such cases of large excess refunds will be strictly avoided. The Committee suggest that the Inspecting Asstt. Commissioner should specifically check during these inspections as to how far the departmental instructions were carried out by the Income Tax Officers so far as assessment of taxes was concerned. Failure to carry out departmental instructions should be viewed seriously.

The Committee also desire that adequate action should be taken against the I.T.O. for his negligence and failure which jeoperdised the Government revenue to this large extent.

Mistakes committed while giving effect to appellate orders, para 72 page 65:

Sub-para (a)

1.145. While completing the assessment of an electric company the Income-tax Officer disallowed development rebate claimed on 'Main and Service connections' to the extent of Rs. 34·98 lakhs. This amount of Rs. 34·98 lakhs, however, included a sum of Rs. 8:08 lakhs added twice over on account of service connections. The assessee pointed this out to the Income-tax Officer who thereupon passed a rectification order restricting the development rebate disallowance to Rs. 26·90 lakhs. The assessee, however, went on appeal and the Appellate Asstt. Commissioner held that the Income-tax Officer was not justified in disallowing the development rebate and that the

development rebate should be allowed on both mains and service connections. While implementing this appellate order, the Income-tax Officer allowed development rebate on the amount of Rs. 34·98 lakhs instead of the correct amount of Rs. 26·90 lakhs, giving the assessee an excess refund of Rs. 5·08 lakhs on an excess allowance of Rs. 8·08 lakhs. The Ministry have stated that the mistake has since been rectified and the sum of Rs. 5·08 lakhs recovered.

1.146. In the case of the same assessee another short levy of Rs. 10·49 lakhs was pointed in para 27 of the Sixth Report of the P.A.C. (Third Lok Sabha). The Committee asked whether it was the same I.T.O. who had committed mistake in the present case also. The witness stated that officers were different.

1.147. The Committee desired to know how the mistake occurred in the present case. The Chairman of the Central Board of Direct Taxes stated that on a representation from the assessee, the I.T.O. rectified the error under Section 154 reducing the disallowance to Rs. 26·90 lakhs, because there was an arithmetical error in adding a sum of Rs. 8·08 lakhs twice over in the original disallowance. Later when the assessee appealed against the original orders of the I.T.O. regarding disallowance of development rebate, the Appellate Assistant Commissioner granted the claim for development rebate, but in his order by mistake he mentioned the amount allowed Rs. 34·98 lakhs instead of Rs. 26·90 lakhs. The I.T.O. while giving effect to order of the Appellate Assistant Commissioner went by the figure of Rs. 34·98 lakhs without looking into the fact that this figure had already been reduced by him to Rs. 26·90 lakhs. The Comptroller and Auditor General stated the I.T.O. should have got the mistake rectified by the Appellate Asstt. Commissioner when the order of the Appellate Commissioner was received by him. The Chairman of the Central Board of Direct Taxes stated that the I.T.O. had since left the Deptt. and this case was not looked into either by the Internal Audit party or the Inspecting Staff. The tax had been fully recovered.

1.148. The Committee consider it unfortunate that Appellate Asstt. Commissioner mentioned the figure of development rebate as Rs. 34·98 lakhs instead of Rs. 26·90 lakhs. What is more regrettable is that the I.T.O. who had himself earlier corrected the arithmetical error of a sum of Rs. 8·08 lakhs having been added twice over did not check up the amount of allowance while giving effect to the order of the Appellate Asstt. Commissioner, and this resulted in an excess refund of Rs. 5·08 lakhs. The Committee are surprised to know that although this case related to a big company involving a

substantial amount of refund, it was neither checked by the Internal Audit Party nor the Inspecting Staff.

Sub-para (b)

1.149. In the case of a company it was held by the Income-tax Appellate Tribunal that deduction on account of royalty was admissible only to the extent of the minimum amount payable by the company and that any amount paid in excess of this minimum was to be added back. The Income-tax Officer, however, did not give effect to these orders correctly with the result that the expenditure of Rs. 34,884 for the year 1948-49 and 1949-50 which should have been disallowed was not assessed to tax. On this being pointed out, the Ministry have stated that the mistake has since been rectified and a further demand of Rs. 49,412 has been recovered.

1.150. The Committee asked how the mistake occurred and what action was taken against the assessing officer. The Chairman of the Central Board of Direct Taxes stated the I.T.O. concerned had explained that the mistake occurred partly on account of heavy pressure of work. At that time he was holding five comparatively important charges, because four officers had gone on leave. Asked if a limit had not been fixed on the number of charges to be held by an I.T.O. at a time, the witness stated that it was very rare that such a situation developed where an I.T.O. held more than two charges; that could happen temporarily for a week or so and not for a long period. Normally the I.T.Os were not allowed leave simultaneously at a particular place. The witness added that the tax had been fully realised.

1.151. The Committee regret to observe that in this case the orders of the Appellate Tribunal were not properly given effect to resulting in an under-assessment of tax to the extent of Rs. 19,412. The Committee consider it very unsatisfactory that the I.T.O. who committed the mistake was so much over-burdened with work at the particular time that he had to hold five important charges. The Committee hope that suitable administrative arrangements will be made to avoid such instances in future.

Failure to levy the additional super-tax in the case of companies, para 73, pages 66-67.

Sub-para (a)

1.152. Under section 23A of the Income-tax Act, 1922, companies in which the public are not substantially interested have to distribute to their shareholders a statutory percentage of the distributable

income of any previous year within 12 months of the close of that year. Where the dividend distributed falls short of such statutory percentage, the Income-tax Officer has to levy an additional super-tax at the prescribed rate on the undistributed balance of the distributable surplus of that year. In one case, while passing orders to levy the additional super tax for three assessment years 1957-58 to 1959-60, the penal super tax was levied on the difference between the statutory percentage of the distributable income and the dividend declared instead of on the difference between the distributable income and the dividend declared. This had resulted in a short levy of tax to the extent of Rs. 3,14,756. The Ministry had stated that steps were being taken to rectify the mistake.

1.153. The Committee asked about the explanation given by the I.T.O. for the short-levy of tax in this case. The Chairman of the Central Board of Direct Taxes stated that the I.T.O. had said that there was a *bona fide* error committed in spite of the best care having been taken, for which he had deeply regretted. Asked if in view of the large amount involved, the assessment was looked into by the Assistant Commissioner, he replied that he did not take the calculations into amount. When it was pointed out that the case involved a question of application of law, the witness agreed that it was a mistake of principle. The Committee pointed out that if the I.T.O. had any doubts, the Assistant Commissioner should have seen whether the basis was correct or not. The witness stated that instructions had been issued to the Commissioners in September, 1965 on this point that such mistakes should be avoided.

1.154. The Committee feel concerned over the mistakes made by the I.T.O. in the levy of additional super tax involving short-levy of tax to the extent of Rs. 3,14,756. It is regrettable that the Assistant Commissioner who checked up this case, could not detect the mistake, although it involved a question of application of law. The Committee hope that the Central Board of Direct Taxes would take suitable steps to ensure that such mistakes are avoided in future.

Para 73 (b)

1.155. Where the dividends distributed by a company other than an investment company fall short of the statutory percentage of not more than 5 per cent., the Income-tax Officer is required under section 23A (2) of the Income-tax Act, 1922 to give notice to the company to make a further distribution of dividend to cover the short-fall. In such a case, no order under secion 23A levying additional super tax is to be passed. Where the short-fall is more than 5 per

cent., an order under section 23A levying additional super tax on the entire difference between the distributable income and the dividend declared is statutorily necessary.

1.156. The dividends distributed by a private limited company were less than the statutory percentage by more than 5 per cent in the assessment year 1956-57 and 1957-58. In spite of the difference exceeding the prescribed percentage the Income-tax Officer issued notice to the company to declare further dividends equal to the short fall and the company also complied with the notice. The incorrect issue of the notice contrary to the provisions of the law resulted in the foregoing of revenue by way of additional super tax to the extent of Rs. 47,900 for the assessment years 1956-57 and 1957-58. The Ministry have accepted the objection but have stated that since the assessee had acted upon the opportunity given to it and declared further dividends to make up the short fall, it did not appear possible to invoke section 23A in this case.

1.157. The Committee asked if the wrong notice was not issued to the Company to make good the short-fall after obtaining the approval of the Inspecting Assistant Commissioner. The witness stated that this did not require the approval of the Inspecting Assistant Commissioner. The witness further added that the I.T.O. did not know that there was a limit of 5 per cent and he thought that wherever there was no declaration, he could issue a notice. Since the company had declared further dividends in pursuance of the notice, it was not considered appropriate to pursue the case further and withdraw the notice. Asked if the explanation of the I.T.O. had been obtained, the witness stated that the officer had admitted the mistake committed through a mistaken impression and over-sight and had expressed his regret. The Department were not satisfied with the explanation for ignorance of law and a warning had been placed in his confidential roll.

1.158 The Committee regret to observe that the incorrect notice issued by the Income-tax Officer to the company to declare further dividends resulted in clear loss of revenue to the extent of Rs. 47,900.

1.159. In their earlier Reports (Para 53 of 21st Report and para 41 of 28th Report—Third Lok Sabha), the Committee have adversely commented upon non-levy of additional super-tax under Section 23-A of the Income-tax Act, 1922 and desired that the procedure should be tightened, and the Board should keep close watch on the position. The Committee are concerned to find that the Audit Report, 1965 had also disclosed under-assessment of super-tax of

Rs. 25·57 lakhs involved in 80 cases. The Committee would like to know about the action taken by the Board of Direct Taxes to tighten the procedure with a view to eliminate such cases.

Income escaping assessment, para 74, pages 67-68:

Sub-para (a)

1.160. A joint stock company had a paid-up capital of Rs. 38·79 lakhs, Rs. 38·74 lakhs of this share capital stood registered in the name of one person and the balance of Rs. 5,000 was held by another. Of the sum of Rs. 38·79 lakhs, Rs. 38·05 lakhs represented preference shares entitled to a fixed rate of dividend of 10 per cent. No dividend was however, paid on these shares ever since 1948. Though the shares stood registered in the name of the two persons, they were actually transferred under blank transfer from time to time to certain other companies belonging to the same group.

1.161. On 31st May, 1955, a block of these shares held by one of these companies was transferred by it to a second company within the group which, in turn, sold all these shares to a third company belonging to the same group. On 31st October, 1955, dividend for 7 years was declared and the third company which held the shares at that time became entitled to the entire dividend of Rs. 26·64 lakhs. The dividend income of Rs. 26·64 lakhs became assessable in the hands of the third company for the assessment year 1956-57 but that company did not submit its return of income for this year on the plea that its books had been seized by the Special Police. An *ex-parte* assessment was, therefore, made on 17th March, 1958, estimating the income of the company at Rs. 86,488. The dividend income of Rs. 26·64 lakhs thus escaped assessment in the hands of that company.

1.162. The Company made an application for reopening the *ex-parte* assessment but this application was rejected. The company went also in appeal against this assessment and claimed certain expenditure against the estimated income of Rs. 86,488. The Appellate Assistant Commissioner allowed these expenses estimating them at 10 per cent and reduced the assessment to Rs. 77,837. Thus, there was an escapement of income to the extent of Rs. 26·64 lakhs involving approximately a tax of Rs. 11·56 lakhs.

1.163. The Member (Income-tax) stated that in this case the mistake arose from the fact that the company which filed the return did not disclose the dividend declared and they did not know about the declaration of the dividend from the company which declared the dividend. The matter was now under consideration in the

Deptt. of Company Law Administration. The witness added that on further investigation it appeared that the company had not enough profits to declare the dividends and it took a loan from another of their groups, and the question whether the declaration of the dividend was proper was being enquired into by the Deptt. of Company Law Administration. Asked how the dividend escaped the notice of the Deptt., the witness stated that the main reason for the failure of the machinery was that the company which declared the dividends, did not file a statutory return which it was required to do. The witness agreed that this omission on the part of the company was a criminal offence and added that the whole matter had to be looked into.

1.164. Asked about the reasons for delay in taking action in the case which related to the year 1958, the Member (Income-tax) stated that the Board came to know about it only after the receipt of audit objection. The Comptroller & Auditor General stated that Audit came to know about this because they tried to trace the dividends from the second company holding those shares. The Chairman of the Central Board of Direct Taxes stated that the matter came to the notice of the Director of Investigation as early as 1962 and was being pursued by him. The Committee asked whether apart from the investigation by the Director of Investigation who looked into individual cases, a system existed in the Department to pursue such inter-group transfers. The Member (Income-tax) stated that in respect of dividends exceeding Rs. 5,000, companies were required to file a statutory return, but in the present case this was not done. The I.T.O. who made assessment of the company declaring the dividend for the particular year should have verified whether this information had been passed on to the officer concerned. To that extent there had been a failure. The Committee pointed out that there was further failure inasmuch as the I.T.O. assessing the third company made an ex-parte assessment inspite of the non-submission of return by it on the plea that its books had been seized by the Special Police. The Chairman of the Central Board of Direct Taxes stated that the I.T.O. tried to get the books but these were not made available to him. The witness agreed that there was no need of hurry in completing the assessment without looking into the books as the case was not getting time-barred, and the officer could have waited.

1.165. The Member (Income-tax) stated that in order to prevent recurrence of such cases, the system had been changed. Previously the dividends return used to be sent to the Collation Branch in

Delhi, which used to communicate the information to the various I.T.Os. concerned. Now this collation was being done in the Commissioner's charge itself, so that there would be coordination between the I.T.O., in the Commissioner's charge assessing the company and the I.T.O. communicating the information regarding the dividends declared. In reply to a question the witness stated that in the past also there was a system of concentration of the companies belonging to the same group under charge of the same I.T.O., but in the present case it was not considered necessary to include the company which declared the dividends under the same charge.

1.166. In reply to another question, the witness stated that third company in this case did not have any assets to pay the tax. At the time of the declaration of the dividend, the shares had been registered in the name of some other persons. The Deptt. were taking action against both the company and the registered shareholders, and the proceedings had not yet been completed.

1.167. The Member (Income-tax) stated that the I.T.O. assessing the second holder, who knew about the declaration of dividend had written to the I.T.O. in January, 1961, assessing the company to verify the transfer of shares from that company holder and that he treated the transfer of shares as sham and collusive transaction. The assessee filed an appeal against the I.T.O.'s order and succeeded before the Appellate Asstt. Commissioner who held that such transactions constituted genuine share dealing. The Deptt.'s appeal before the Tribunal failed and ultimately even the High Court upheld the transfer of shares as a genuine transaction. The Committee desire to be furnished with a detailed note on this case.

1.168. In their note the Ministry have stated that on 15th October, 1955, *i.e.*, 15 days before the declaration of dividends, the shares had been transferred to another company (company No. 4) belonging to that group, although in the books of the company declaring the dividend, the dividend in question stood credited to the account of the company No. 3. The payment for these shares were made by the individuals to whom the shares were ultimately allotted. So on the crucial date when the dividend was declared *i.e.*, 31st October, 1955, the shares in question were held beneficially by the group holding company No. 4, although the originally registered shareholders on the records of the company continued to be the same as before.

1.169. The action taken by the Government in this case is as follows:—

(1) The Company Law Administration have claimed before the Companies Tribunal that the declaration of the dividends itself was illegal and not in conformity with company law and that the company had unlawfully depleted its funds to this extent. It seems that at the time of declaration of dividends the company had no profits but on a mandate from the previous chairman, who was also the registered shareholder of these shares, the company made the payment (towards dividends) out of sum of Rs. 30 lakhs borrowed from another company, but without complying with the prescribed procedure for approval and declaration of dividends according to company law.

(2) As a precautionary measure action under section 147(a) has been taken to reopen the assessment of company No. 3 for 1956-57.

(3) Action is being taken to tax the dividends in the hands of the members of company No. 4 because at the time of declaration of dividend they were the beneficial owners of these shares.

(4) Instructions have been issued to assess the dividend in the hands of the two persons in whose names shares were originally registered, since they were the registered shareholders on the date of declaration of dividend.

1.170 The Committee feel that this was a deliberately devised and planned scheme to evade tax and defraud the Government. They also feel that special care is necessary in assessing the companies of this group and there should be proper coordination between the I.T.Os. dealing with them.

1.171. The Committee regret to note that in this case there was failure on the part of the I.T.O. who assesses the company declaring the dividend to verify that the company had filed a statutory return to this effect as required under the law. The officer also failed to inform the I.T.O. assessing the other companies to whom shares were transferred about the declaration of dividend. The result was that the I.T.O. assessing company No. 3, in whose name the dividend stood credited on the crucial date and whose books were with the Special Police Establishment, was not aware of the declaration of

the dividend while making the assessment on the basis of the previous year's income. It is also regrettable that the I.T.O. assessing the third company made unnecessary hurry in completing the assessment without looking into the books of the company which were with the SPE. It is surprising that the SPE kept the books for seven years from September, 1955 to September, 1962. It is also surprising that the I.T.O. made no efforts either to obtain copies of relevant entries or even to inspect the books while they are in the SPE's custody.

1.172. The Committee note the remedial action taken by the Deptt. to establish better co-ordination among I.T.Os. in communicating the information about the declaration of dividends. Further, the companies controlled by the same group are concentrated in the same charge at various stations. The Committee desire that Government should consider what further measures are necessary to prevent recurrences of such cases. They would also like to know the outcome of the present case. The Committee suggest that necessary investigation should be made to discover the possibility of collusion between the assessee Group of companies and the revenue officers.

1.173. The Committee also suggest that cases pertaining to the other companies of this group referred to in this case should be reviewed.

Para 74(b):

1.174. A husband and his wife entered into a separation agreement pursuant to which the wife was paid in the previous year relevant to the assessment year 1959-60 an amount of Rs. 4 lakhs as maintenance allowance. This receipt which had flowed from an agreement and consequently assessable as income was omitted to be taxed for the year 1959-60. This omission was pointed out in audit. On reassessment, an additional amount of Rs. 3.18 lakhs would accrue to Government.

1.175. The Committee desired to know whether the assessment had been revised and what was the demand raised and recovered The Chairman of the Central Board of Direct Taxes stated that the additional demand raised was for Rs. 3.18 lakhs which was pending in appeal before the Appellate Assistant Commissioner. The Commissioner had allowed the assessee time for payment till the appeal was decided.

1.176. In reply to a question, the witness stated that the original assessment was made on 28th February, 1962 and the revision on 29th October, 1964; the appeal had not yet been heard. Asked if any special steps had been taken to expedite the disposal of the appeal, the witness stated that the Board had written to all commissioners recently that where substantial amounts were involved pending decision on appeals, the Appellate Assistant Commissioners should take up such cases quickly so that the matter was closed early.

1.177. The Committee are not happy over the delay in the disposal of the appeal filed by the assessee in this case, resulting in a large amount of demand (Rs. 3.18 lakhs) outstanding. They hope that the Commissioners will strictly follow the recent instructions of the Board that where substantial amounts were involved pending decision on appeals, the Appellate Assistant Commissioner would take up such cases quickly.

Para 74 (c):

1.178. In the course of assessment of the income of an assessee for the assessment year 1957-58 the Income-tax Officer came across a dividend warrant of Rs. 44,000 the income from which was included by the assessee in his return for 1957-58. The accounting year of the assessee was Diwali year and the dividend income was not considered by the Income-tax Officer for the purpose of the assessment of the total income for the assessment year 1957-58 on the ground that the dividend pertained to the period prior to the previous year. Accordingly, the assessment for the year 1956-57 should have been reopened for taxing the dividend income. This was, however, not done and the entire income of Rs. 44,000 thus escaped assessment. The tax involved on this account is Rs. 23,000.

1.179. The Committee asked if the assessment had been rectified. The Chairman of the Central Board of Direct Taxes stated that the re-assessment proceedings had been initiated but not yet completed. Actually, in this case investigations were also afoot consequent upon some searches and seizures. The Committee asked how such mistakes escaped even the Special Investigation Circle which was supposed to deal carefully with a lesser number of cases than others. The witness stated that although the number of cases dealt with by that circle was less than those by other circles, these were much more than what they should have. In the present case the I.T.O. concerned completed the assessment on the 30th March, 1962, at the end of the financial year and was transferred in April, 1962. He did not find time to initiate reassessment proceedings in the

short period that he had at his disposal. The witness added that the explanation of the officer had not been accepted and he had been warned. The Comptroller & Auditor General pointed out that the same I.T.O. was concerned with another case of under-assessment of Rs. 67,000.

1.180. Asked if any steps were being taken to improve the working of the Special Investigation Circles, the witness stated that their work load was being substantially reduced by transferring back a large number of cases from the circles to the regular I.T.Os. In the case of Special Circles the normal disposal was 100 to 200 cases per I.T.O. whereas in the case of other it was 1000 to 1200. Asked if in the present case the assessment was checked by the Internal Audit, the witness stated that according to the information received from the Commissioner, it had not been checked by them.

1.181. The Committee regret to observe that this is a clear case of omission to tax the income when all the facts were available on record. The Committee rather feel concerned over such omissions occurring in the Special Investigation Circles who have to deal with comparatively less number of cases.

1.182. In the present case before the I.T.O. relinquished charge in April, 1962, he should have mentioned in detail the action required to be taken to his successor, so that the assessment for the year 1956-57 could be reopened. This apparently was not done. It is all the more regrettable to note that the same I.T. Officer was concerned with another case involving an under-assessment of Rs. 67,000. The Committee suggest that this case may be investigated in detail with a view to fixing responsibility, and taking disciplinary action against officers concerned.

1.183. *Other lapses—para* 75(a), *pp.* 68-69—Under the Income-tax Rct, 1922 as it stood prior to 1st April, 1960, a proportionate amount equal to the tax paid by a company on its profits was deemed to have been paid on behalf of the shareholders and this amount was added to the net dividend and credit given for it in the shareholders' assessment. This proces was known as grossing up. This grossing up was limited only to the proportion of the actual tax paid or certified as payable by the company on its profits. Therefore the correct figures of taxed and untaxed portion of the funds used by each company for declaration of the dividend were the determining factors for finding out the quantum of tax credit admissible to the shareholders. To obtain this information it was provided under the rules that the percentage of taxability of the

profits was to be indicated in the dividend warrant itself by the company declaring the dividend and the departmental regulations also provided for information being furnished by the Income-tax Officer assessing the company declaring the dividend regarding the percentage of taxed profits to all the other Income-tax Officers.

1.184. It was noticed that in the case of a non-resident company although the percentage of taxed profits was indicated as nil in the dividend warrant filed by it, the net dividend was grossed up by taking 100 per cent of the profits as taxable. This resulted in net excess credit of Rs. 34,276 being allowed for the assessment year 1959-60. In the case of the same company the dividend warrants in respect of the assessment years 1955-56 to 1958-59 indicated that the dividend came out of 100 per cent taxable profits. A comparision of the dividend warrant with the assessment records of the company declaring the dividend indicated that in respect of the dividents taxable in the assessment year 1955-56, only 31 per cent of the dividend came out of the taxable profits and that in respect of the assessment years 1956-57 and 1957-58 only 20 per cent came out of taxable profits while in respect of the dividends taxable in the assessment years 1956-57 and 1957-58 only 20 per cent came out of taxable profits while in respect of the dividends taxable in the assessment year 1958-59 no part of the dividend came from taxable profits. The grossing up of the dividends at 100 per cent in respect of all these years resulted in a net excess credit of Rs. 1,24,677.

1.185. In the case of another two companies the net dividends assessable in the assessment years 1957-58, 1958-59 and 1959-60 were likewise grossed up taking 100 per cent of the profits as taxable on the basis of the certificates furnished by the companies concerned on the dividend warrants. A comparison of the assessment records of the company declaring the dividend which was assessed in the same Income-tax office revealed that the percentage of taxable profits out of which dividends were declared was less than 100 per cent and consequently a net excess credit of Rs. 1,47,956 was allowed to these two companies.

1.186. In all these three cases, there has, thus been an excess refund of more than Rs. 3 lakhs. While accepting the mistakes pointed out, the Ministry informed Audit that a recovery of a sum of Rs. 98,439 has become time-barred. As regards the balance, necessary rectification actions were stated to have been initiated.

1.187. Explaining the circumstances under which the irregularities in grossing up occurred, the Chairman of the Central Board of Direct Taxes stated that in one of the three cases, the assessee submitted his return for a number of assessment years stating income from

dividend grossed up at hundred per cent, claiming thereby that the payment of tax at source was made at hundred per cent. The I.T.O. concerned did not verify the percentage of taxed profits from the Company. Normally the I.T.O. got the percentage of taxability of profits from the I.T.O. assessing the company. Generally the dividend certificates were not wrong as had been found in the present case. Adequate details were not available in the dividend certificate from which the I.T.O. could find out the taxable and non-taxable percentage. It showed that 100 per cent profits were taxed at source and this was a wrong information. The witness further stated that the form of the certificate had been changed requiring the details to be shown therein and there were less chances of such mistakes occurring.

1.188. On his attention being drawn to the fact that in the first case for the assessment year 1959-60 even though the taxed profit had been shown as 'nil', in the dividend warrant filed by the company, the net dividend was grossed up by taking 100 per cent of the profits as taxable, the witness admitted that that was a mistake which occurred in one year.

1.189. The Committee further pointed out that in the case of the same company, the dividend warrants in respect of the assessment years 1955-56 to 1958-59 showed that the dividend came out of 100 per cent taxable profits, but actually a comparison of the dividend warrant with the assessment records of the company declaring the dividend, indicated that 31 per cent of the dividend came out of taxable profits in the assessment year 1955-56, and 20 per cent in 1956-57 and 1957-58, and in respect of the dividend taxable in the assessment year 1958-59 no part of the dividend came from taxable profits. The Chairman, Board of Direct Taxes, stated that that information could have been called for and that the I.T.O. made a mistake. The Member (I.T.) stated that necessary particulars would not be available in the old form of the certificate. The form of the certificate was revised in August, 1957 and it became operative from the assessment year 1958-59.

1.190. The Committee pointed out that the company filed the certificate which was false even though it was in the prescribed form and the I.T.O. did not verify the statement of the company and that was the reason for the mistake. To this the Chairman, Board of Direct Taxes, replied that that was entirely correct. In 1957 they had issued instructions to the Commissioners of Income-tax that each officer assessing the company should intimate the percentage to the other officers assessing the shareholders. Asked whether the companies which furnished wrong information could not be prosecuted

for furnishing false certificates, the Chairman of the Board replied that the possibility of this was being looked into by the Commissioner. The Board had written to the Commissioner on 27th September, 1965 whether the question of taking action against the company had been considered. The Commissioner had replied in October, 1965 that this had not been considered and was under examination. In reply to a question, the witness stated that action against the company included criminal liability.

1.191. The Committee enquired whether the entire amount had been recovered. The witness stated that the demand of Rs. 47,198 had been recovered in two cases and in one case the demand of Rs. 2,36,344 had been raised but not yet collected. As regards the balance, the witness stated that in two cases it had become time-barred and the only remedy lay in prosecution which aspect was being examined. Asked about the reasons for delay in taking action, the witness stated that this aspect of criminal liability had not occurred to them earlier. The witness promised to have the matter expedited.

1.192 The Committee asked whether the explanation of the I.T.O. concerned had been obtained, the witness stated that they wrote to the Commissioner in August, 1965 but no reply had yet been received.

1.193 Asked about the delay in asking the Commissioner, the witness stated that there were general instructions also that as soon as the Commissioners received audit paras, they should obtain necessary explanations and details without the Board asking for them. In the present case since it had not come, the Commissioner was asked why it had not been sent. The Committee desired to be furnished with a note on the explanation of the I.T.O. who failed to gross up the dividend correctly. In a note* (Appendix V) submitted to the Committee, the Ministry have stated that the full facts regarding the first company are being collected and a further note will be submitted as soon as these are received.

1.194. The Committee regret to note that in the case of the first company the Income-tax Officer failed to gross up dividends correctly, though the assessment records of the company declaring dividends were available in the same income-tax office. What is more serious is that although the percentage of taxed profits was indicated as 'nil' in the dividend warrant filed by the assessee for the year 1959-60, the I.T.O. concerned grossed up the net dividend by taking 100 per cent of profits as taxable. The lapse on the part of I.T.Os. resulted

*Not vetted by Audit.

in excess credit of Rs. 2,36,344 in respect of the years 1955-56 to 1959-60, a part of which has become a loss as the rectification of assessments had become time-barred.

1.195. Another unsatisfactory aspect of this case is that there was delay in investigating into this after it was brought to the notice of the Board by Audit. The Committee would like to know about the action taken against the company for filing false certificates and also against the I.T.O. for his omission. The Ministry should also examine what further remedial measures are necessary to guard against the shareholder filing false returns.

1.196. As regards the other two companies, it has been stated in the note furnished by the Ministry that the dividend declared was much less than the book profits and assessed profits of the company declaring the dividend. There is nothing to show that the company had not paid tax on its entire profits out of which the dividends were declared. However, as a result of objection by Revenue Audit, the assessments in both the cases were revised by the Income-tax Officer for the assessment year 1959-60. Both the companies appealed against the order of the I.T.O. and the Appellate Assistant Commissioner has given them relief as he has held that the book-profits and the assessed profits of the dividend payment company being much higher than the amount of dividend declared, it could not be said that any part of the dividend has been distributed out of untaxed profits. The Appellate Assistant Commissioner therefore, held that the grossing up of the dividend at 100 per cent instead of 97·2 per cent was correct. The Commissioner of Income-tax was contesting the correctness of the Appellate Assistant Commissioner's order before the Tribunal. The Committee would like to know the outcome of the appeal before the Tribunal.

1.197. The Committee were informed during evidence that internal Audit Party which looked into two assessments could not detect the mistake because the files of the company were not with them at the time of checking and they also went by the certificates of the companies. The Committee are surprised that the Internal Audit Party did not even check that the I.T.O. had got the certificates furnished by the Companies verified. The Committee were informed that instructions would be issued to the Internal Audit to conduct

this type of examination. They trust that in future the Internal Audit would be careful so that such mistakes may not go undetected.

Para 75(b), *p.* 69:

1.198. In paragraph 65 of the Audit Report on Revenue Receipts for the year 1964, it was pointed out that in 126 cases a total amount of interest of Rs. 1·30 lakhs leviable for non-payment of advance tax was neither levied nor waived under orders of the competent authority.

1.199. During the year under review, a test check of 347 cases revealed such non-levy of interest to the extent of Rs. 8,32,529 for failure to pay advance tax.

1.200. The Committee enquired if the assessments had been rectified in all the cases pointed out by Audit and the amount of non-levy of interest recovered. The witness stated that at the end of August, 1965 there were only 84 cases left. In all the other cases rectifications had been carried out. As regards the five cases in which over Rs. 3·19 lakhs was involved, the Committee were informed that in one of the cases involving Rs. 50,475, the Income-tax Officer had waived it with the permission of the Inspecting Assistant Commissioner. The Comptroller and Auditor General pointed out that at the time of audit, the I T.O. had accepted the Audit objection. The Committee desired that a note might be furnished stating whether this interest was waived before the receipt of audit report or after its receipt in this case. In their note* (Appendix VI) the Ministry have stated that the approval of the Inspecting Assistant Commissioner for waiving the interest chargeable was obtained on 31st January, 1964 whereas the audit objection was raised by Revenue Audit Party during the period 17th July, 1964 to 28th July, 1964.

1.201. The witness added that in the other case involving a sum of Rs. 90,000 the amount was due to be recovered and the explanation of the I.T.O. in that connection was awaited. The third case involving an amount of Rs. 72,329 could not be rectified because of statutory time-bar. That particular case related to the years 1953-54 and 1954-55 and the assessments were made in 1958-59. The explanation of the officers concerned had been called for. As regards the other two cases, the witness stated that the mistakes were being rectified. In one of these two cases involving Rs. 50,872 the Inspecting Assistant Commissioner had been asked to fix the responsibility and a further report was awaited; and in the other involving Rs. 55,798 the explanation was being called for from the officers concerned.

*Not vetted by Audit.

1.202. The Committee enquired about the steps taken to avoid omission to levy the penal interest in future. The witness stated that instructions had been issued to Commissioners of Income-tax to ensure that penal interest would be levied in all the cases wherever it was leviable. The Income-tax Officers had also been asked while making assessment, to look into the earlier assessment also and to see whether there had been any mention of it in earlier year also. In view of those steps the witness hoped that chances of such omissions would be reduced.

1.203. Asked how the I.T.Os., who were required to do 250 cases more in a year, would be able to follow the instructions, the witness added that the internal audit had also been instructed to carefully look into those matters but the amounts involved were not generally much. Another difficulty had arisen that according to the Supreme Court's recent decision the penal interest could not be levied where it had not already been levied, because the presumption was that the I.T.O. had considered it. So the I.T.Os. were being impressed upon to be careful in those matters and charge interest according to law.

1.204. The Committee are unhappy to note that in spite of their earlier recommendations—para 66 of 21st Report (Third Lok Sabha) and para 44 of 28th Report (Third Lok Sabha)—there had been omission to levy penal interest. Out of the 347 cases reported in the audit para, in five cases alone the penal interest omitted to be levied was about Rs. 3·19 lakhs. This resulted to the loss of revenue to Government as in one case Rs. 50,475 were waived and in another case Rs. 72,329 could not be rectified because of time-bar. The Committee desire that such lapses should be strictly avoided and penal interest, wherever leviable should be levied, unless waived by the competent authority, for adequate reasons to be recorded.

1.205. During evidence, it was stated that instructions had been issued to Commissioners of Income-tax to ensure that penal interest would be levied in all the cases wherever it was leviable. The I.T.Os. had also been asked while making assessment, to look into the earlier assessment also and to see whether there had been any mention of it in earlier year also. They hope, that with the issue of these instructions, such lapses will not occur in future.

Para 75(e), *p.* 70:

1.206. In the case of an assessee whose assessment for the year 1957-58 was completed on 30th March, 1962, the tax demand amounted to Rs. 5,179·89. The total amount of tax paid by the assessee in-

cluding the advance tax of Rs. 504.25 was taken by the Department as Rs. 7,922·37 and after adjusting the demand of Rs. 5,179·89, the balance of Rs. 2,742·48 was refunded to the assessee.

1.207. It was found in Audit in June, 1962 that the assessment file contained only one chalan for Rs. 504·25 in support of the payment made by the assessee as against the total amount of Rs. 7,922.37 shown to have been paid by him in the Demand and Collection Register. The Department was requested to investigate about the missing challans for the balance amount of Rs. 7,418.12. In June, 1963, the Department reported that vouchers for another sum of Rs. 582·19 were available and the balance amount of Rs. 6,835·93 was recovered from the assessee on 15th November, 1962. The incorrect entries in the Demand and Collection Register and non-verification of challans in support of the payments actually made by the assessee at the time of granting the refund resulted in an excess refund of Rs. 6,835·93 which might have gone unnoticed but for the Audit scrutiny in June, 1962.

1.208. The witness stated that the case under discussion was received by one I.T.O. on transfer from another. The transfer memo did not show any outstanding demand. The receiving officer started, therefore, with a nil arrear demand in the case. The witness further informed the Committee that in every case of transfer, there was a form in which the transferring officer was to state if there was any demand pending. In this case the demand of Rs. 6,835·93 was pending but the transferring officer failed to note it in the transfer memo and so the receiving officer thought that there was no demand pending. In reply to a question, the witness admitted that the records of the transferring officer were wrong. The demand raised had been shown as though it had been collected, though it had not been fully collected. The Demand and Collection Register had been posted with wrong entries. The witness added that the Commissioner was looking into the case as to how the mistake occurred and his report was awaited. Asked if it was not a case of possible collusion with the assessee, the witness stated that they had looked into the matter at the receiving officer's end and promised to look into the matter at the transferring officer's end.

1.209. The Committee desired that a note might be furnished stating how the mistake occurred in this case and whether an enquiry had been made in the matter by the Commissioner.

1.210. The note* received from the Ministry is at Appendix VII. From this note the Committee observe that the excess refund was recovered in this case on 15th November, 1962 by adjustment against other refunds due to the assessee.

1.211. They however, regret to note that such a glaring mistake had taken place and yet it was not detected at any level in Income-tax Department. It is surprising that even though this irregularity was pointed out by Audit in June, 1962, yet the Commissioner who was looking into the case had not submitted this final report. The Committee desire that the report in this case should be finalised early and suitable action should be taken against persons responsible for the lapses.

Over-assessments—Para 76(*d*), *p.* 72:

1.212. For the taxation of individuals the Finance Act provides slab rates both for income-tax and super-tax upto certain limits of income. In respect of that portion of the total income which exceeds these limits tax is payable at a fixed rate. In three cases assessed by the same Income-tax Officer where the total income exceeded these limits, the fixed rates of 25 per cent for income-tax and 45 per cent for super-tax were applied to the entire total income for the assessment year 1958-59 ignoring the slab rates which applied to part of the total income. The resultant over-assessment of tax in these cases amounted to Rs. 66,072.

1.213. The Committee were informed that the acceptance of the audit objection was intimated to the Comptroller and Auditor General in November, 1964. The assessment had been rectified. There was also some correction and additional demand was under recovery. As against a refund of Rs. 66,000 in this case, the additional demand amounted to Rs. 92,000 because at the time of rectification it was noticed that only provisional share income had been taken into consideration and not the actual share income determined subsequently.

1.214. In reply to a further question, the Committee were informed that the mistake in calculating the tax was made by a U.D.C. who had been warned for that. The head clerk who checked it had since expired.

*Not vetted by Audit.

1.215. When the Committee enquired whether any of the three cases was checked by internal audit, the witness replied that the Commissioner had informed that the internal audit had not checked them, but he added that the officer might have made a mistake, in reporting to the Board. The Committee desired to be furnished with information whether out of three cases any one was checked by internal audit. If so, whether this fact was brought to the notice of the Board of Direct Taxes. In their note, the Ministry have stated that one of the cases was looked into by the Internal Audit Party in June, 1964, i.e. about 8 months after the Revenue Audit had pointed out the mistake in November, 1963.

1.216. The Committee further enquired whether any of the three assessees had approached the Board for rectification. The witness stated that there was nothing on record to indicate that.

1.217. In reply to another question, the witness stated that sometimes there were cases of over-assessment which were time-barred. The Committee, therefore, desired to be furnished with a list of cases of over-assessment where the rectification had become time-barred and as a result of which relief could not be given to the parties concerned. The Ministry have furnished a statement giving particulars of 66 cases. In one of the cases, the amount of tax over-assessed was Rs. 67,167, the refund of which has become time-barred.

1.218. Explaining the steps taken to avoid assessments becoming time-barred after four years, the Member (Income-tax) stated that the internal audit was arranged in such a way that assessments were checked within a period of three years so as to allow one year for rectification.

1.219. The Committee are not happy over the cases of over-assessments which are as serious mistakes as under-assessments. The Committee feel that for no fault on the part of the assessees, they had been penalised. The Committee take a serious view of the cases of over-assessments which have become time-barred.

1.220. The Committee appreciate that in order to avoid assessments becoming time-barred after four years, the Internal Audit is arranged in such a way that assessments are checked within a period of three years so as to allow one year for rectification. But at present the Internal Audit Parties checked only a limited number of assessments and even out of a few cases checked by them in some cases mistakes escaped their notice. The Committee therefore, feel that remedy lies in improving the efficiency of the assessing machinery and the vigilance by the Internal Audit Department.

Other topics of interest—Para 77 (a), page 72:

1.221. Under the Income-tax Act, any reasonable sum expended for the purpose of realising interest on securities is to be allowed as a deduction in computing this income. For this purpose of determining the reasonable amount the Act provides that in the case of a banking company the expenditure that can be set off against interest on securities shall be an amount proportionate to the total expenses incurred in respect of all its sources of income. This provision which is applicable only to a banking company was made applicable by a departmental circular issued in November, 1962 to all Cooperative Societies carrying on the business of banking. A co-operative bank is not a company under the provisions of the Income-tax Act or the Companies Act. It is registered under the Co-operative Societies Act which enjoins that the provisions of the Companies Act shall not be applicable to such Co-operative Societies. The expenses towards realisation of interest cannot therefore be computed on proportionate basis as is done in the case of banking companies. This view point is also reiterated in a judgment delivered by the Madras High Court in July, 1962. On account of following the instructions in the circular which are contrary to law, there has been an under-assessment of Rs. 6·29 lakhs in 13 cases.

1.222. The Chairman of the Central Board of Direct Taxes expressed the view that the circular issued by the Board in November, 1962 was not wrong. All the same, the Board had accepted the legal position as enunciated by Revenue Audit. But intention of the circular was to apply the same yardstick for determining the reasonable amount in relation to the Cooperative banks as was provided in the Act for banking companies. The witness expressed the view that the circular need not be changed.

1.223. The Comptroller and Auditor General pointed out that in the case of banking companies, the Parliament had authorised to make the deduction at a flat rate, while in the case of others, it was to be made on the basis of actuals. So the reasonable sum in the case of Cooperative Banks had a reference to the actual expenditure. The C. & A.G. added that the Audit view had been accepted in that the law itself had been amended. This view also upheld by the Madras High Court. The Member (Income-tax) stated that in the particular case referred to the Madras High Court, the I.T.O. had mentioned that he was making this allowance under explanation in clause (a) of Section 8. The Madras High Court had held that co-operative societies carrying banking business were not banking companies and clause (a) of Section 8 of Banking Companies Act was not applicable. The witness expressed the view that according to

High Court only the Explanation to Section 8(a) was not applicable. The C. & A.G. pointed out that the decision of the High Court was based on an earlier decision of the House of Lords which envisaged the principle that the authority administering tax law could not impose a method by an executive fiat without the sanction of Parliament. The Chairman of the Board held the view that since the amounts were not ascertainable from the books, the provision for reasonable sum was made in the Income Tax Act. The C. & A.G. pointed out that Audit would have had no objection if the instructions issued to the I.T.Os. had been that they should check the ac ounts and in case the amount was more than what was allowed to the banking companies, they should scrutinise them more carefully. The Member (Income-tax) admitted that this had been mentioned in the circular but the way the instructions were issued was wrong.

1.224. The Committee are sorry to note that the Central Board of Revenue issued a circular in November, 1962 giving a concession to the cooperative banks, which had not been authorised by Parliament in the way it was given

In evidence, it was admitted that the way the instructions were issued by the Department of Revenue was wrong. The Committee note that the law has since been suitably amended to fill up this lacuna. The Committee trust that the Board would review their instructions if not already done, in the light of the amended law.

Para 77(b), pp. 72-73:

1.225. According to Rule 3 of Income-Tax Rules framed under the Income-tax Act, 1961 corresponding to Rule 24A of the Income-tax Rules framed under the Income-tax Act, 1922, salary includes bonus or commission payable monthly or otherwise for the purpose of calculating the value of rent free accommodation. It is considered that the word 'otherwise' is intended to cover variable bonus or commission as the word 'monthly' would account for the bonus or commission drawn regularly at a fixed rate. It was, however, noticed in audit that in certain cases, variable commission or bonus was not taken into account for the purpose of calculation of the value of rent free accommodation. This resulted in an under-assessment of tax to the extent of Rs. 2,40,954 in 55 cases relating to four Income-tax Offices in one charge. The aforesaid under assessment was noticed in the course of test check of selected cases only. The Commissioner of Income-tax justified the exclusion of the variable bonus and commission on the basis of the instructions issued by the Central Board of Revenue in their circular No. 2D of 1956 and No. 15D

of 1960 according to which bonuses and commissions not paid on a fixed basis or by way of regular addition to the employees' pay should be excluded from salary for the purpose of calculating the value of rent free accommodation. The circulars in question are not in accordance with the provisions of Rule 24A of the Income-tax Rules, 1922, or Rule 3 of the Income-tax Rules 1962. The Ministry have stated that the audit objection is correct and that the circulars of 1956 and 1960 are being withdrawn.

1.226. In the Audit Reports on Revenue Receipts for the years 1963 and 1964 also two instances were pointed out where certain orders of the Board had to be rectified later at the instance of Audit. The Revenue Department does not follow the general practice of the Expenditure Department in previously consulting audit in regard to orders relating to modifications and interpretations of financial rules.

1.227. The Committee were informed by the Chairman of the Board of Direct Taxes that instructions in regard to the provisions of law were issued by the Board generally after consulting the Ministry of Law. The Board did not usually issue executive instructions modifying the provisions of law and such instructions were issued only rarely with a view to mitigate the hardships not intended under the provisions of law. Although the Board did not follow the practice of Expenditure Department in consulting the Audit before issuing the instructions relating to modifications and interpretation of financial rules, the copies of the executive instructions issued were forwarded to C. & A.G.

1.228. On being suggested to examine to desirability of following a uniform procedure as obtaining in the Expenditure Department the Secretary, Department of Revenue and Co-ordination promised to look into the matter further. The Committee desired that a note might be furnished on this point. The note* has been received and is at Appendix VIII. In this note the Ministry have stated that the general practice of the Expenditure Department of previously consulting Audit in regard to orders relating to modifications and interpretations of Rules and Regulations cannot provide a proper comparison in this regard. The Department of Expenditure is concerned with modifications and interpretations of the Financial Rules with regard to which the Comptroller and Auditor General is the final arbitrator. Interpretation of the provisions of the Income-tax Act and other direct taxes enactments, on the other hand rests on the view which the various High Courts and the Supreme Court may take of these provisions. In view of this position, it is not necessary for them to consult any other authority except the Ministry of Law

*Not vetted by Audit.

1.231. During evidence the witness stated that the additional demand of Rs. 1,41,700 had been collected.

1.232. The Committee asked whether in view of the complicated nature of cases of computation of capital for the purpose of super tax, sur tax etc., and special officers were appointed for this purpose. The witness stated that the company cases were mostly assessed in company circles where generally efficient officers were posted. Those officials were given a reasonably small number of cases, i.e. roughly 150—200 assessments a year. In some cases where revenue involved was very large the number of assessments had been reduced to 120 or 130, depending upon the revenue, and type of the cases etc.

1.233. In reply to another question, the witness stated that it was beyond the scope of internal audit to check computation of capital. But they would be instructed to check up super profit tax cases.

1.234. The Committee feel concerned over the type of mistake committed by the assessing officers in these three cases, even though they were dealt within company circles where generally efficient officers are posted. The concerned officers included in the computation of capital 'provision for taxation' and 'provision for dividends', neither of which could be construed as reserve, being the amounts set apart to meet specific liabilities known to exist on the date of the balance sheet. This resulted in short levy of tax amounting to Rs. 1,41,700 which was realised after being pointed out by Revenue Audit. The Committee were informed that, at present, it was beyond the scope of the Internal Audit to check computation of the capital. The Committee were, however, assured that the Internal Audit Department would now be instructed to check up the super profit tax cases also. The Committee desire that suitable instructions extending scope of Internal Audit to such cases may be issued and the cases already completed may also be reviewed.

Income-tax demands written off by the Revenue Department during the year 1963-64*—*Para* 79, *pp.* 74-75:

1.235. The Income-tax Department had written off a total demand of tax Rs. 1,60,37,681 of which Rs. 24,05,481 relate to companies and

*The figures in this paragraph are as furnished by the Ministry.

the balance relates to assessees other than companies The reasons for write-off as furnished by the Ministry in the case of both companies and non-companies are as follows:—

	Companies		Non-Companies		Total	
	Number	Amount	Number	Amount	Number	Amount
I. Assessees having died leaving behind no assets, or have gone into liquidation or become insolvent.		Rs.		Rs.	Rs.	
(a) Assessees having died leaving behind no assets . .	..	..	88	4,77,935	88	4,77,935
(b) Assessees having gone into liquidation	37	16,66,964	..	..	37	16,66,964
(c) Assesees having become insolvent		..	27	2,60,484	27	2,60,484
	37	16,66,964	115	7,38,419	152	24,05,383
II. Assessees being untraceable . . .	15	1,05,855	941	14,05,991	956	15,11,846
III. Assessees having left India . .	1	12,574	78	5,78,431	79	5,91,005
IV. For other reasons ·						
(i) Assessees who are alive but have no attachable assets .	11	2,39,978	381	32,49,921	392	34,89,899
(ii) Amount being petty etc. .	2	4	461	10,355	463	10,359
(iii) Amount written off as a result of settlement with assessees .	2	2,41,005	21	76,32,277	23	78,73,282
(iv) Demands rendered unenforceable by subsequent developments such as duplicate demands, demands wrongly made, demands being protective etc	3	1,39,101	11	16,003	14	1,55,104
	18	6,20,088	874	1,09,08,556	892	1,15,28,644

	Companies		Non-Companies		Total	
	Number	Amount	Number	Amount	Number	Amount
		Rs.		Rs.		Rs.
V. Amount written off on grounds of equity or as a matter of international courtesy or where the time labour and expense involved in legal remedies for realisation are considered disproportionate to the amount for recovery	..	..	3	803	3	803
TOTAL .	71	24,05,481	2,011	1,36,32,200	2,082	1,60,37,681

1.236. The Committee desired to be furnished with a note giving information on the following points:

(a) The highest amount written off relates to 37 companies which have gone into liquidation. Of the sum of Rs. 16.66 lakhs written off, in how many cases assessments were completed after the companies had gone into liquidation? The particulars of the Companies where the amount written off has exceeded Rs. 3 lakhs may be furnished.

(b) In the cases of 15 companies it is stated that the assessees are not traceable. The names of the companies may be given with a brief note as to how these companies became untraceable.

(c) In respect of assessees who are alive but have no attachable assets (Non-companies) Rs. 32.49 lakhs has been written off. What is the latest year to which the demands included in the list relate? The particulars of cases where amounts exceeding Rs. 5 lakhs have been written off under this head may be furnished.

(d) The list of 23 assessees in whose cases amounts have been written off after settlement may be furnished. The particulars of the original demand raised, the amount collected and the amount written off with brief reasons for coming to a settlement may be indicated.

1.237. The Ministry of Finance (Department of Revenue) furnished the information to the Committee. The Committee desired to be furnished with further information on the points arising from

the Ministry's note. The Ministry have also furnished the required information.

1.238. The Committee find from the Ministry's notes that out of 37 companies which have gone into liquidation, in respect of which a sum of Rs. 16.66 lakhs was written off during 1963-64, there were four cases where amounts written off exceeded Rs. 1 lakh involving Rs 11.74 lakhs. Out of those in two cases the assessments were completed after the Company had gone into liquidation. In case of 33 companies the amount written off was less than Rs. 1 lakh in each case. Out of these, in six cases, the assessments were completed after the companies had gone into liquidation.

1.239. During the year 1964-65 the total amount of tax liability written off has been stated as Rs. 97,47,072. There were 16 cases where the sum of above Rs 1 lakh was written off involving a sum of Rs. 77,60,097.

1 240. With regard to the procedure followed in write off of demands, the Ministry have stated that if it is found that arrears of tax cannot be recovered such arrears of tax can be written off under the powers of write off of the I.T.O.|I.A.C.|C.I.T. as follows:

(i) All I.T.Os (Class II) if empowered by the C.I.T. upto Rs. 100|- in each case.

(ii) All I.T.Os (Class I) (if empowered by the C.I.T.) upto Rs. 250|- in each case.

(iii) All I.A Cs upto Rs. 2,000 in each case.

(iv) The C.I.T. can write off without any limit.

However cases, where proposed write off exceeds Rs. 1 lakh, are referred to a special Committee which sends its recommendations to the Board which examines the proposals for such write off and if satisfied with the reasonableness of the proposals, give its concurrence. Cases involving write off of Rs. 5 lakhs or above are considered by the full Board. Cases involving write off of above Rs. 25 lakhs are referred to the Finance Minister. Cases in which arrear demands exceeding Rs 1 lakh are to be written off are referred by the C.I.T. to the Special Committee, which consists of the Commissioner concerned having jurisdiction over the case, one more Commissioner and a Director of Inspection as a representative of the Board. The procedure for referring the cases to a special committee was laid down in January, 1957. After examining the

case for write off and after satisfying themselves that every conceivable avenue of approach to the problem of recovery in a given case has been explored fully and finally, they forward their recommendations to the Board for their consideration and for issue of necessary orders in the matter.

1.241. From the statement furnished to them, the Committee regret to note that there was inordinate delay in making assessments, which ultimately resulted in writing off of the tax demands. In some cases assessments were completed after the companies had gone into liquidation. The Committee emphasize the need for making timely assessments and recoveries in cases of companies involving large tax liabilities, as delay in such cases is fraught with risks of huge losses to Government. The Committee also suggest that in future, cases of abnormal delays in making assessments should also be investigated with a view to finding out the failure of the Departmental officers.

1.242. Details of two cases where tax was written off as a result of settlement with assessees are given below.

1.243 In one case the amount written off was Rs. 19,67,120. A sum of Rs. 22.61 lakhs was outstanding against an assessee, a cashew nut exporter of Quilon for the assessment years 1119 M.E. 1123 M.E. to 1125 M.E. and for the assessment years 1950-51 to 1953-54. According to Audit this demand included a sum of Rs. 1,32,276 raised by the Investigation Commission for the assessment year 1119 M.E. Under an agreement entered into with the Commissioner the assessee had to pay the sum of Rs. 1,32,276 in six instalments beginning from 30th June, 1958 but even the first instalment was defaulted. In the meanwhile, he complained against over assessments by the Department and submitted a petition stating that he was in financial difficulties and that the dues outstanding against him should be sealed down so that he may be in a position to pay the tax demand.

This matter was initially examined by the Directorate of Inspection (Investigation) but later on, a special Committee examined his contention that several over-assessments and overlapping additions were made and that if these were set right, the demand could be considerably reduced. On a review, the net liability on the assessee was found to be Rs. 7,44,271 as against Rs. 22.89 lakhs. As there were difficulties in the realisation of this amount, the special committee went into the question of recovery. It analysed the assets of the assessee and his financial position and found that the assessee's total liabilities were over Rs. 22 lakhs for income-tax, and Rs. 21 lakhs

for other creditors as against the assets of Rs. 15 lakhs which included a residential house worth Rs. 1.25 lakhs alienated in favour of his wife and children The assessee had made an offer to pay Rs. 3 lakhs in full and final settlement for the tax due from him upto-date. The special committee had also to consider a letter from the Kerala Government which stated:

> "The Company apprehends that the case will be prolonged further and that they will not be in a position to re-start the business with the State aid. The closing down of the factory will mean unemployment to labourers numbering about 7000. Hence it is in the interest of this Government also to see that the Income-tax proceedings are disposed of as quickly as possible I, therefore, request that the Directors of Inspection (Income-tax) will be so good as to dispose of the case of the Company at an early date so as to facilitate the Company to reopen their Factory and to begin work."

1.244. The Ministry have further stated that if the assets of the assessee valuing Rs. 15 lakhs were put to forced auction sale, the realisation was expected to be much less than Rs. 15 lakhs. Moreover, all the properties (excluding certain properties given to the Income-tax Department as security and certain shares total valuing at Rs 3,14,450) were encumbered and the secured creditors would be entitled to priority of payment over debts to Government.

1.245. Having considered all the facts of the case, the Special Committee came to the finding that if the assessee paid a sum of Rs. 3 lakhs against the net reasonable demand of Rs. 7.44 lakhs, the settlement would be fair and reasonable in the circumstances of the case. The assessee agreed to pay a sum of Rs. 3 lakhs in 2½ years of which a sum of Rs. 1¼ lakhs was to be paid during the financial year 1960-61 by the 15th March, 1961 and the balance in six quarterly instalments. The settlement was approved by Minister of Revenue (Civil & Exp.). The demand outstanding at the time of settlement was Rs. 22,67,120. After settling the case for Rs. 3 lakhs the balance Rs. 19,67,120 was written off.

1.246. The Committee regret to note that the tax liability of Rs. 22:67 lakhs created initially was over estimated and that "if over-assessment and over-lapping additions were set right, the tax-demand of Rs. 22,89,867·45 could be fixed at Rs. 7·7D lakhs." The

Committee emphasize the need for curbing the tendency on the part of officers to inflate the assessments as such a tendency would result in undue hardship and harassment to the assessees.

1.247. It is also surprising to the Committee that in the present case even after the net liability was fixed at Rs. 7·44 lakhs, the Special Committee while analysing the liability of the assessee again took the tax liability as Rs. 22 lakhs against the assets of Rs. 15 lakhs. Ultimately however, the Special Committee came to the finding that if the assessee paid a sum of Rs. 3 lakhs, the settlement would be fair and reasonable. The Committee do not find adequate justification in settling the tax liability of the assessee at Rs. 3 lakhs when the assessee had property worth Rs. 15 lakhs. In their opinion Government should have realised Rs. 7·44 lakhs which was considered as reasonable assessment.

1.248. In another case the amount written off as a result of settlement with the assessee was Rs. 14,28,366. The Special Committee went into the financial position of the assessee and reported that with the abolition of the Zamindari System in 1951, the major source of the assessee's income had disappeared. The Special Committee analysed the statement of the assets and liabilities and after making adjustment for various liabilities which were not admissible, they came to the conclusion that against the assets of Rs. 16 lakhs the liability would be Rs. 12 lakhs. The Special Committee, therefore, recommended that the assessee should pay a sum of Rs. 4 lakhs in a period of 2 years. Since the assessee insisted on being allowed to pay the amount in a period of 7 years, his offer was rejected. The assessee then came forward with a proposal to make an immediate payment of Rs. 3 lakhs. The Special Committee to whom the case was again referred, recommended that the assessee's offer of Rs. 3 lakhs, down cash, should be accepted in view of the fact that it was brought to their notice that the financial position of the assessee had further deteriorated on account of considerable fall in the value of the shares of the Company which had been valued at Rs. 710 per share, and a decree had also been passed by the Civil Court. The Finance Minister, however, directed that Government should insist on payment of Rs. 4 lakhs which the assessee accepted. The Committee are surprised how the Special Committee recommended that the assessee's offer of Rs. 3 lakhs should be accepted. Actually when the Government insisted on the payment of Rs. 4 lakhs, the assessee accepted to pay the amount. The Committee desire that the Special Committee should not be unduly liberal in recommending write off of tax demands.

Arrears of tax demands, para 80, pages 76-77:*

1.249 As at the end of 31st March, 1964 a total demand of Corporation Tax and Income-tax, amounting to Rs. 277.76 **crores was outstanding. The figure for the corresponding period last year was Rs. 271.71 crores. The years to which this arrear demand relates are as follows:—

	(In crores of Rs.)
Arrears of 1953-54 and earlier years	38·51
Arrears of 1954-55 to 1961-62	106·43
Arrears relating to 1962-63	35·68
Arrears relating to 1963-64	97·14
TOTAL	277·76

1.250. One of the reasons for the amounts remaining outstanding is stay of collections of tax granted by the various appellate authorities on appeals and revision petitions. The figures relating to the number of cases in which the tax has been stayed together with the amounts of tax stayed as on 30th June, 1964, are given below:—

	No. of cases in which tax was staved	Amount of tax stayed
		(In crores of rupees)
(a) before Appellate Assistant Commissioners	3,785	12·37
(b) before Tribunals	480	3·90
(c) before High Courts	357	3·44
(d) before Supreme Court	22	0·44
(e) Revision petitions before Commissioners	252	0·23
	4,896	20·38

*The figures in this paragraph are as furnished by the Ministry.

**The final figure is Rs. 282.37 crores.

†This figure of 271.71 has since been corrected pro forma as 270.43 mentioned at page 61 of P.A.C.'s 28th Report.

bad debt type of arrears in the old arrears list. That was being scrutinised and by writing off, these amounts were being eliminated.

1.254. Asked to what extent the total arrears contained inflated demands, the Chairman of the Board stated "It is difficult to say, but some portion of it may be inflated. We have not calculated and gave into it in that way, but I suppose a fair portion of this would be irrecoverable". The Member (Income-tax) stated that this was not withstanding the fact that we are making a very fair and very equitable assessment. On being suggested that the old arrears should be reviewed with a view to reducing them to a realistic figure, the Chairman of the Board stated that "the only way will be to expedite the writing off business". The witness added that under the present system even if out of a demand of Rs. 50 lakhs, only Rs. 1 lakh was realisable, the balance of the demand could not be written off until Rs. 1 lakh had been actually realised which might take two to three years. As a result of a recent discussion with the Comptroller & Auditor General, instructions had been issued to write off such demands partially leaving a sufficient margin for possible recovery. So this process would be expedited.

With regard to the steps taken to avoid over-assessments and inflated demands, the witness stated that it had been impressed upon the officers that over-assessment was worse than under-assessment. The Assistant Commissioners recorded in the confidential reports of the assessing officers whether they were in the habit of making reasonable assessment, over-assessment or under-assessment. The Commissioner then evaluated the work of the officers on the basis of the reports of the Appellate Assistant Commissioner, who was specifically asked to state whether the officer made reasonable assessment.

1.255. When questioned whether any such record was kept about the work of the officers the witness stated that keeping of record of each officer in case of each assessment made by him and then its 'follow up' was really tremendous task. The work of the ITO was to be judged as a whole. The Committee pointed out that there should be a method by which the performance of the officer making over assessments or under-assessments over a long period could be specifically taken into account in forming a judgment about him. The witness stated that he had come across certain cases where the Commissioners had mentioned in the confidential report, that a particular officer was prone to over-assessment; such remarks were communicated to the officer concerned.

1.256. The Secretary of the Department of Revenue and Coordination stated that introduction of a system of evaluating the work of individual officers on the basis of a record of over-assessments or under-assessments was a very complicated question, which had to be considered much more carefully.

1.257. The Committee feel concerned to note that the gross arrears have increased from Rs. 270.43 crores as on 31st Mach, 1963 to Rs. 282.37 crores as on 31st March, 1961 out of which effective arrears are stated to be Rs. 161·41 crores. What is more, an amount of Rs. 38·95 crores relates to the period prior to 31st March, 1954, out of which Bombay and West Bengal charges account for Rs. 13·21 crores and Rs. 15·86 crores respectively (about 75 per cent).

1.258. The Committee have repeatedly impressed that in the context of the present national emergency and economic development, it is imperative that the past arrears should be realised by intensifying the collection effort and current collections should not be allowed to accumulate (of para 31 of 6th Report, Para 72 of 21st Report and para 67 of 28th Report—Third Lok Sabha). But there is no perceptible improvement in the position. They hope that efforts will continue to be made to liquidate the arrears.

1.259. During evidence the Committee were informed that a fair portion of the arrears would be irrecoverable on account of the demands being inflated. It was stated that only course to reduce the arrears was to expedite the writing off process. The Committee hope that as a result of the instructions issued recently after consultation with the Comptroller & Auditor General, to write off inflated demands partially leaving a sufficient margin for recovery, the arrears would be substantially reduced. The Committee desire that the process should be kept under review. The Committee also recommend that at the time of agreeing to scale down the demand which is accepted as inflated, full payment of the balance or security in lieu there of should as far as possible, be insisted upon. Then, the inflated portion of the demand as well as the correct of arrears would disappear. They would watch the results through future Audit Reports.

The Committee feel that the root cause of inflated demands i.e. over-assessment by the ITOs should be effectively dealt with. They were informed during evidence that it had been impressed upon the officers that over-assessment was worse than under-assessment; but that the introduction of a system of evaluating the work of individual officers on the basis of a record of over-assessments or under-assessments was a very complicated question, which had to be con-

sidered much more carefully. The Committee hope that some more effective procedure would be devised with a view to ensuring that reasonable demands are raised by the ITOs, and any tendency towards over or under-assessments is rooted out.

1.260. In reply to a question, the witness stated that there was a provision in the Income-tax law to stay recovery of demands pending in appeal before Appellate Assistant Commissioners, but there was no such provision in regard to the appeals pending before High Courts or Supreme Court. The witness promised to examine whether a similar provision should be made in the case of appeals with High Courts or Supreme Court. **The Committee would like to know the results of this examination.**

1.261. The Committee enquired about the latest position of the appeals pending with Appellate Asstt. Commissioners. The Committee were informed that as on 1st September, 1965, 1,16,356 cases were pending. The number was increasing because the number of appeals was also going up year by year and the number of assessments was also going up. In order to dispose of these cases, 40 more Appellate Asstt Commissioners had been asked for; their present number was 107. The witness also gave figures of annual disposal of appeals:

1962-63	1,19,801
1963-64	1,18,610
1964-65	1,20,352
1965-66 (31-7-1965) . .	38,241

1.262 As regards the latest position of appeals pending, the Committee were informed that no appeal for the year prior to 1953-54 was pending All appeals filed in 1952-53 and earlier had been disposed of Only one appeal each for the year 1953-54 and 1954-55 was pending. 341 appeals for the period 1953-54 to 1959-60 were pending as on 1st September, 1965. On the same date, pending appeals were 723 for 1961-62, 2646 for 1962-63, 8230 for 1963-64 and 51,548 for 1964-65.

1.263. The Committee feel concerned to find that the number of pending appeals increased from 74,120 as on 31st March, 1963 to 84,736 as on 30th June, 1964 and 1,16,356 as on 1st September, 1965. This indicates that the position has been steadily deteriorating. The oldest case relates to 1953-54. In their 21st and 28th Reports (3rd Lok Sabha) the Committee had observed that early and adequate action should be taken to bring down the arrears with the Appellate Asstt. Commissioners so as not to exceed four months work load, as

suggested by the Direct Taxes Administration Enquiry Committee. The Committee hope that with the proposed increase in the number of Appellate Asstt. Commissioners, the number of appeals pending disposal would be reduced and special attention would be given to dispose of old outstanding appeals which have been pending disposal since 1953-54. The Committee also suggest that the number of the Appellate Asstt. Commissioners should be increased to the sanctioned strength without any further delay.

Arrears of assessments, para 81(a), *pages* 77-78:

1.264. It was noticed that as on 31st March, 1964, 12·26 lakhs of cases were outstanding with Income-tax Officers pending assessment. The approximate tax involved in these cases could not be ascertained. The years-wise break-up of the outstanding cases is indicated below:—

Year	Number of Assessments
1959-60	2,789
1960-61	37,341
1961-62	87,134
1962-63	2,68,084
1963-64	8,31,058
TOTAL	12,26,406

1.265. Analysis status-wise of the case that are pending is as follows:—

Status	No. of Assessments pending
Individuals	9,05,004
Hindu undivided families	1,05,952
Firms	1,51,007
Other Associations of persons	30,835
Companies	33,608
TOTAL	12,26,406

1.266. The number of assessments completed out of the arrear assessments and out of the current assessments during the past five years are given below:—

Financial Year	Number for Assessments for disposal	(Number of assessments completed) Out of current	Out of arrears	Total	No. of assessments pending at the end of the year
1	2	3	4	5	6
1959-60 .	16,72,001	2,29,550	4,33,674	11,63,224 (69·6 %)	5,08,777
1960-61 . .	18,26,012	7,32,248	4,74,647	12,06,895 (66·1 %)	6,19,117
1961-62 . .	20,21,330	8,06,265	5,02,658	13,08,923 (64·8 %)	7,12,407
1962-63	22,18,376	7,96,815	5,12,902	13,09,717 (59 4%)	9,08,659
1963-64	27,09,107	9,22,670	5,60,031	14,82,701 (54·7 %)	12,26,406

(Figures in brackets in column 5 represent percentage of cases disposed of to total number of assessments for disposal).

Arrears continue to increase both in absolute terms and in percentages.

1.267. The Committee were informed that the approximate amount locked up in 12·26 lakhs cases pending assessment was Rs 25 crores. Out of these, 8 83 lakhs were small cases and the others were average cases. The reason for the accumulation of small cases was that while the number of cases went up the number of officers remained the same.

1.268. When the Committee enquired of the number of cases of business income exceeding Rs 15,000 out of 40,130 cases relating to 1960-61 and earlier years, the witness stated that the required information was not readily available The Committee enquired as to why the percentage of number of assessed cases was going down. The witness stated that this was due to the increase in the number of tax payers. As regards the steps taken to liquidate arrears, the witness stated that the number of officers was being increased. Sanction had been received for another 300 posts of income-tax Officers in 1964-65. Certain methods were also being devised to reduce the time taken by officers for disposal of cases of small incomes They were also introducing mechanisation of tax calculation in respect of salary cases. When the Committee pointed out that the arrears had doubled since 1959-60 and the percentage of

disposal had gone down from 69·6 per cent in 1959-60 to 54·7 per cent. in 1963-64 the Secretary, Deptt. of Revenue and Company Law stated that the problem could be tackled with the help of mechanical aids of certain kinds, improvement of staff, further training and categorising of cases requiring less attention etc. It also required more vigorous and purposeful planning by the Board itself. The Board were trying to strengthen their planning. The witness added that although no targets for disposal had been fixed for the coming years, it was expected that the increasing trend of arrears would be reversed. He added that they would examine, if it was possible to lay down any targets and try to keep up to them.

1.269. The Committee regret that the percentage of disposals of assessments had been progressively declining from 1959-60. The percentage has declined from 69·6 in 1959-60 to 54·7 in 1963-64. The pending assessments have increased from 5,08,777 at the end of 1959-60 to 12,26,406 at the end of 1963-64.

1.270. They trust that with the proposed addition of 300 Income-tax Officers and introduction of mechanisation, the position will improve. The Committee hope that the Board will carefully examine various aspects while planning the assessing machinery, so that the past arrears and increasing future assessments are tackled effectively. In this connection the Ministry should also examine the feasibility of laying down targets to complete the arrears of assessments. The Committee would like to watch the progress made by the Department of Revenue in this direction through future Audit Reports.

Pendency of Super Profits Tax assessments, para 81(b), *page* 78:

1.271. The figures relating to the disposal of the Super Profits Tax assessments as on 1st April, 1964 are as under:—

(1) No. of cases for disposal during 1963-64	3,918
(2) Number of cases disposed of provisionally	1,051
(3) Number of cases disposed of finally	451
(4) Amount of demands raised on provisional assessments	Rs. 2,236 lakhs
(5) Amount collected on provisional assessments	Rs. 2,093 lakhs
(6) Amount of demand raised on final assessments	Rs. 156 lakhs
(7) Amount of demand collected out of that in item (6)	Rs. 121 lakhs
(8) Number of cases pending as on 31-3-1964	2,416

Thus out of 3,918 cases, only 451 cases were completed finally during the period ending 31st March, 1964.

1.272. The Committee were informed that the approximate demand locked up in 2416 super profit tax cases as on 31st March, 1964, was Rs. 5.43 crores, out of which about Rs. 4 05 crores had been collected upto August, 1965. There were already instructions that the disposal of the pending cases should be expedited. The witness added that the out of 3,918 cases for 1963-64, 451 cases were finally disposed of in 1963-64 and 767 in 1964-65. All the cases had been provisionally assessed.

1.273. In reply to a question, the witness stated that the number of pending cases upto end of March, 1965 was 1476. Asked about the position of sur-tax cases under the new Act, the witness stated that the information was not available.

1.274. The Committee are not satisfied about the progress of disposal of super profit tax assessments. They desire that vigorous efforts should be made to expedite the final assessments. At the same time, utmost care should be taken in dealing with these complicated cases involving large amounts of tax.

Refunds—para* 82, *page* 79:

1.275. The number of refund applications outstanding as on 31st March, 1964 is 6,317 involving an amount of 31·44 lakhs. The break-up of the refund applications with reference to the period of pendency is as follows:—

	No. of cases	Amount involved
		(in thousands of rupees)
(i) Refunds outstanding for less than a year as on 31st March, 1964	6,333	2,594
(ii) Refunds outstanding between 1 and 2 years as on 31st March, 1964	803	528
(iii) Refunds outstanding for 2 years and more as on 31st March, 1964	59	129
(iv) Interest paid to assessees for delayed refunds	..	14

1.276 Under section 243 (I) of the Income-tax Act, 1961 the Central Government has to pay interest at 4 per cent per annum on all refund claims outstanding for more than six months.

1.277. During evidence, the Committee were informed that out of 59 cases outstanding for more than two years, 25 had already been disposed of. The year-wise break up of 31 cases out of the remaining 34 was as follows:—

1957-58	2
1958-59	2
1959-60	1
1961-62	3
1962-63	23
TOTAL	31

There was no information available for the rest of the three cases.

1.278. With regard to the steps taken to grant refunds within the prescribed period to avoid payment of interest on account of delay, the Committee were informed that instructions had been issued to expedite their disposal. The Commissioners had also been impressed upon in the matter. 'Refund weeks' were also observed here and there all over India. The witness stated that considering the number of cases for disposal, the number pending was small. The reason for pendency of these cases for a long time would be gone into.

1.279. The Committee then desired to be furnished with a note stating (i) in how many cases interest totalling Rs. 14,000 was paid and what was the highest amount paid and (ii) what are the reasons for delay in the settlement of refund cases which have been outstanding for more than 2 years. The interim note* furnished by the Ministry is at Appendix X.

1.280. The Committee feel concerned over the delay in disposal of applications for refund. 862 applications for refund involving a refund of about Rs. 6,57,000 are outstanding for more than a year. The Committee desire that necessary steps should be taken to expedite disposal of applications for refunds. The Ministry may also consider if it is necessary to simplify the procedure in this regard.

*Not Vetted by Audit.

Frauds and evasions, para 83, *page* 79:

1.28r.(1) Number of cases in which penalty under section 28(1)(c)271(I)(c) was levied in 1963-64	6,678
(2) No. of cases in which prosecution for concealment of income was launched	Nil
(3) No. of cases in which composition was effected without launching prosecution	..
(4) Concealed income involved in (1) to (3)	Rs. 13,49,47,847
(5) Total amount of penalty levied on (I)	Rs. 1,56,55,373
(6) Extra tax demanded on concealed income (I) to (3)	Rs. 2,18,58,707
(7) Cases out of (2) in which convictions were obtained	..
(8) Composition money levied in respect of cases in (3)	..
(9) Nature of punishment in respect of (7)	..

1.282. The Committee were informed that 1963-64 was the second year after the enforcement of the Incom-tax Act, 1961. There was no prosecution in cases of concealment of income and fraud because there were no fit cases to be proceeded against. But after the observation of P.A.C. in their 21st Report (February 1964) there were 28 cases of prosecution in 1964-65. For this purpose an intelligence wing had been created in the Board. There were 2 experts from U.S.A. to help in prosecution. Besides, 3 officers had also been sent to U.S.A. for training in that particular aspect of work and 6 others for other purposes. The foreign experts were helping the Board to look into what organisational or legal changes were necessary to make prosecution more effective. They were looking into the cases and suggesting where prosecution should be launched.

1.283. The experts had submitted some reports for certain organisational changes. They have been asked to furnish more details which were awaited.

1.284. In reply to a question, the Committee were informed that the estimated concealed income involved in the cases of searches was about Rs. 100 crores. Quite a number of these cases came under the disclosure scheme 60 : 40, subsequent to the searches. The largest amount involved in single case was Rs. 1 crore approximately. About 600 raids and searches had been carried out.

1.285. The Committee are alarmed at the amount of concealed income (Rs. 100 crores) disclosed as a result of about 600 raids and searches carried out by the Department The largest amount involved in a single case was Rs. 1 crores. The Committee feel that

the existence of large scale concealed income indicates that the Income-tax Department has not been fully effective in assessing the income correctly and preventing their concealment. The Committee suggest that immediate steps should be taken by the Government to devise means to prevent such concealment and evasion of taxes.

1.286. The Committee are glad to note that Ministry is looking into the question of introducing organisational and legal changes in consultation with experts to make prosecutions more effective and that officers have also been sent to the U.S.A. for training in this particular aspect. The Committee hope that the matter would be kept under constant review.

II

OTHER REVENUE RECEIPTS

Ministry of Transport and Aviation

Review of the Accounts of the Director of Transport, Delhi—Para 84, pages 80—83:

2.1. Under the Delhi Motor Vehicles Taxation Act, 1962 which came into force with effect from 1st April, 1963 the Directorate of Transport, Delhi collects taxes on motor vehicles. Certain irregularities in the accounts of the Department mentioned in Delhi Audit Report, 1955 and 1956 were examined by the Public Accounts Committee in para 31 of their 13th Report (1958-59). The system of payment of tax in court fee stamps was found to be defective and was replaced by Cash-*cum*-cheque system on 1st September, 1960.

The total collection on this account for 1963-64 amounted to Rs. 1.7 crores.

2.2. A general review of the working of the cash-*cum*-cheque system conducted in August, 1964 brought out certain unsatisfactory features which are dealt with below.

2.3. *Loss due to short levy of tax sub-para* (i).—Under the Act a tax at the rate of Rs. 100 for every tonne or part thereof should be levied and collected annually on all Motor Vehicles registered laden weight of which exceeds 10 tonnes. It was noticed that in respect of vehicles the laden weight of which exceeded 10 tonnes the tax was being recovered on these vehicles at the rate of Rs. 700 for the first 10 tonnes resulting in an under-assessment of Rs. 300 per vehicle per year. The number of such vehicles used or kept for use in Delhi during 1963-64 and in the first two quarters of 1964-65 were over 2500 and 2140 vehicles respectively and the short-assessment during this period would thus work out to about Rs. 10.71 lakhs.

2.4. The Ministry stated in December, 1964 that the proposal of the Delhi Administration was to levy the tax on goods vehicles the registered laden weight of which exceeded 10 tonnes at the rate of Rs. 700 for the first 10 tonnes and at the rate of Rs. 100 for every additional tonne or part thereof. The word 'additional' was stated to have been omitted inadvertantly at the draft stage from the Act.

2.5. The Committee desired to know why the tax was not levied

according to the provisions of the Delhi Motor Vehicles Taxation Act, 1962. The Secretary, Ministry of Transport (now Deptt. of Transport, Shipping and Tourism) stated that the intention behind the Act was not brought out in the Act and the Act was drafted inaccurately. Subsequently it was amended with retrospective effect. The Committee enquired whether the officers were justified in collecting tax on a basis different from that authorised by Parliament. The witness replied that if the provision of the Act had been applied then it would have led to "absurd conclusion". To avoid that, they implemented the intention. The intention was that for every additional ton over 10 tonnes Rs. 100 was to be charged. The Chief Secretary, Delhi Administration added that in January, 1965, the Ministry of Transport had ordered an enquiry into this matter and within a fortnight the report would be submitted to the Government of India. The concerned Officer had submitted his explanation.

2.6. As regards the provision of the Act, the witness added that there was no intention on the part of any Government servant to flout the authority of the Parliament. It was only the rationale behind it that guided them. It was in that light that they submitted an amendment to the Government of India which was ultimately approved by the Parliament. The witness admitted that as far as the letter of the law was concerned, it was not observed.

2.7. The Committee consider it very unfortunate that a serious mistake cropped up while drafting the Delhi Motor Vehicles Taxation Act, 1962. What is more serious was that officers concerned while giving effect to the provisions of Act as passed by Parliament failed to implement the provision regarding levy of tax at the rate of Rs. 100 for every tonne part thereof on all vehicles with a laden weight exceeding 10 tonnes. The Committee take a serious note of the action of the officers which was not in conformity with the provisions of the Act as passed by the Parliament.

2.8. The Committee were given to understand that an enquiry had been ordered in the case. The Committee understand from the Delhi Administration that as a result of the enquiry made into this case, action is being taken against the officers concerned who have been found negligent in performance of their duties. The Committee desire that the Acts of Parliament once passed must be implemented by executive without any change or modification by themselves. If they find any mistake or 'absurd' situation arising from such implementation, they must come to Parliament for the necessary correction. The Committee also hope that the officers concerned with the drafting of various bills having financial implications

would give utmost care in embodying the intentions of Government therein before bringing them to Parliament.

2.9. *Unauthorised delegation of powers sub-para* (ii).—Under the Act, any person or authority may be appointed by the Chief Commissioner by notification in the official gazette to exercise the powers and perform the duties of a taxation authority. It was observed that an Automobile Association was performing and exercising the powers of a Motor Licensing Officer, without any notification by the Chief Commissioner, empowering it to do so.

2.10. The tax collected by the Association amounted to about Rs. 4.16 lakhs and Rs. 5.79 lakhs during 1962-63 and 1963-64 respectively.

2.11. It has been decided by the Administration (December, 1964) to obtain security of Rs. 37,000 from this Association. According to Audit, on a representation from the Automobile Association and keeping in view the standing of the Association, the security was reduced to Rs. 25,000 for the whole year and additional security in such amount and such period as the Chief Commissioner may specify from time to time.

2.12. The Committee enquired why an Automobile Association was performing the functions and exercising the powers of a Motor Licensing Officer, without any notification by the Chief Commissioner, empowering it to do so. The Chief Secretary of the Delhi Administration admitted the delay in issuing the notification. He added that the delay took place in drafting the agreement which was a very difficult and complicated one. It had to go round the Ministry of Law, Finance Deptts. of Delhi Administration, the Government of India and the Automobile Association. Ultimately it had been finally signed.

2.13. The Committee are not happy over an Automobile Association exercising the powers of a Motor Licensing Officer for the years 1962-63 and 1963-64 without any notification by the Chief Commissioner empowering it to do so as required under the Act. The Tax collected by the Association amounted to about Rs. 4.16 lakhs and Rs. 5.79 lakhs during 1962-63 and 1963-64 respectively. Notification authorising the Association to collect the tax was issued by the Chief Commissioner only on 26th February, 1965. Even no security was obtained from the Association till March-April 1965. (According to Audit, the security actually obtained from the Association was : Ten Year Defence Deposit Certificates Rs. 22,000; cash, Rs. 3,000; and Bank guarantee which was under consideration of

2.19 (b) *Cash Books.*—Cash collections are made through 8 to 23 cash counters and each counter cashier maintains a subsidiary cash book wherein entries numbering between 1000 to 3000, involving total receipt of Rs. 60,000 to Rs. 2,00,000 or more are made every day. It was observed that the rules regarding authentication of individual entries by the Motor Licensing Officer, checking of the totals of subsidiary cash books etc. were not being observed.

2.20 The Committee enquired why entries made by the Cashiers in cash books were not authenticated by the Motor Licensing Officer. The witness stated that the work was enormous and it was physically impossible for a single officer to carry out authentication of individual entries. In 1960 the maximum collections in a day were Rs. 70,600. In 1965 the maximum collections in a day were Rs. 5,25,000.

2.21 Entries to be verified had gone up from 2,960 to 5,000 in 1965. To cope with this work, more officers were required. In reply to a question, the witness stated that due to emergency extra staff could not be sanctioned. The Committee desired that a note might be furnished on the following points:

(i) When did the Delhi Administration ask the Home Ministry for more staff for authentication of entries made by the cashiers in cash books.

(ii) How many times the Home Ministry was reminded for the sanction of the staff.

(iii) What was the reply of Home Ministry and what was the latest position.

The information is still awaited.

2.22. The Committee feel concerned over the persistent non-observance of the rules regarding authentication of individual entries by the Motor Licensing Officer, checking of the totals of subsidiary cash books etc.

2.23. They are surprised how, in the absence of authentication of individual entries by the Motor Licensing Officer and checking of totals of subsidiary cash books, it was ensured that there was no leakage of revenue.

2.24. The Committee desire that the staff should be adequately augmented as necessary to cope with the work as the non-observance of the rules in this behalf is likely to result in defalcations, losses etc.

2.25 (c) *Reconciliation:*—Daily reconciliation, as prescribed under the rules, between the total amounts for which tax tokens,

permits etc. had been issued according to registers maintained for the purpose and the total amount collected in cash by cheques and by deposits into Treasury, etc. was not being made. A test check of one months' account showed that there were 13 cases of cash in excess and 23 cases of shortage of cash as compared with the entries of the subsidiary cash books.

It has been explained (December, 1964) that due to shortage of staff it was not found possible to carry out daily reconciliation as prescribed under the rules.

2.26 The Committee enquired why daily reconciliation, as prescribed under the rules, between the total amounts for which tax token, permits etc. had been issued according to registers maintained for the purpose and the total amount collected in cash by cheques and by deposits into Treasury, etc. was not being made and why there were discrepancies in the accounts. The witness stated that during the period, the taxes due had to be collected from 32 collection counters. Improvised Centres had to be established and they were put in charge of temporary staff mobilised from various sources including the police. The staff who did the work got no extra remuneration. They had to handle a very large number of motorists.

2.27 In reply to a question, the witness stated that they had not been permitted to employ seasonal staff as was being done in Bombay. There was shortage of staff. No extra staff had been sanctioned for this work. The shortages had been noted down in a register and were being made good by the concerned cashier when he got his salary. He was a man with a low salary and he could not make up short collection immediately.

2.28. The Committee feel concerned to note that a test check of one month's account showed 23 cases of shortages of cash and 13 cases of cash in excess. This points to the need of having daily reconciliation, as prescribed under the rules, between the total amounts for which the tax token, permits, etc. had been issued and the total amount collected in cash by cheques and by deposits into Treasury etc. They desire that adequate staff should be provided for doing this reconciliation work.

2.29 *Arrears of Tax sub para (iv)*.—The Department started maintaining registers for some series to watch recovery of arrears of tax only with effect from 1960-61. The maintenance of this register was discontinued subsequently. The Department has therefore no effective machinery to assess the demand and watch its recovery.

It is, therefore, not possible to know the extent of total outstanding till a complete review of the accounts is done by the Department.

2.30 It has been stated that for locating cases in which tax has not been paid a very elaborate machinery was required and that action to recover the arrears could be taken only after it was known for certain that tax had not been paid in respect of particular vehicle either in Delhi or in any other part of the country (December, 1964).

2.31 The Committee desired to know how in the absence of records, wherefrom it could readily be ascertained whether or not the total outstanding amount of tax on vehicles had been recovered, the Delhi Administration was able to find out whether tax had or had not been paid in respect of a particular vehicle either in Delhi or in any part of the country. The witness stated that the motorists in Delhi were of a shifting nature. Quite a high percentage of them did not remain in Delhi for long time. They went on changing. It had not been possible to maintain an uptodate record of tax arrears. They were not keeping any statement of cases relating to arrears, But Registers were being maintained by them. The only method to check as to whether the register was correctly maintained or not was by undertaking special drives.

2.32 In reply to a question, the witness stated that they tried to introduce the card indexing system to check the non-payment of tax. But the Ministry of Finance had turned down the proposal due to lack of funds at their disposal. The card indexing system would have cost them Rs 1·5 lakhs while the annual tax collection was Rs 1·25 crores

2.33 The Committee enquired whether the cost of collection in Delhi had been compared with other cities. The witness replied in the affirmative but added that the difficulty was that exact statistical analysis was not possible because in other States, there were districts whose collection cost was mixed up with that of the headquarters.

2.34. The Committee regret to note that there is no effective machinery in Delhi to assess the demand of tax on motor vehicles and to watch its recoveries. The Committee desire that the system followed in other States especially in Bombay city and Calcutta city should be studied with a view to devising an effective machinery in Delhi without adding much to the cost of collection.

2.35 *Internal Check sub para (v).*—No system of internal check calculated to prevent and detect errors and irregularities in the

financial proceedings of the subordinate officers exists in the Department.

2.36. It was explained by the Department that such a system could be introduced only after accounts knowing staff was provided in adequate number.

2.37 The Committee desired to know whether staff having knowledge of accountancy had been provided in adequate number to prevent and detect errors and irregularities in the financial proceedings of the subordinate officers. The witness replied that no arrangement had yet been made. The witness replied that no arrangethis work. In reply to a question, the witness stated that the proposals for more staff had not been sanctioned. The witness added that proposals for more staff were sent to the Ministry of Home Affairs.

2.38. The Committee emphasize the need for introducing a system of internal check in the Department in order to prevent and detect errors and irregularities in the financial proceedings of the subordinate officers. They desire that the necessary action should be taken to provide adequate (accounts-knowing) staff in the Department.

Ministry of External Affairs (now under Ministry of Home Affairs) (North East Frontier Agency)

Loss of Forest Revenue—Para 85 *(a)—Page* 83.

2.39. A lease agreement was entered into by the NEFA Administration with a Company effective from 1st October, 1952, for extraction of trees from a forest mahal located in the NEFA area. The agreement was signed by the lessor and the lessee on the 25th July, 1962. It was for a period of 15 years, and provided for revision of the rates of royalty payable by the contractor, initially after 5 years and thereafter at intervals of every three years.

2.40. After the first five years (September, 1957) the Administration accordingly informed the company of its intention to enhance the rates of royalty with effect from 1st October, 1957. The Company did not agree to the enhancement on the ground that it was incurring losses even at the existing rates of royalty. Thereupon, the accounts of the company were got checked by the Administration by a firm of Chartered Accountants, who reported in August, 1960 that the company was in a position to pay the increased royalty. The Administration was, however, advised by its Legal Adviser in March, 1960 that in the absence of any agreement or other documents to which either the company or the then Managing Agents might

have subscribed, the Government could not make the company liable for payment of royalty at rates higher than those originally stipulated, by any unilateral action on the part of the Administration. The Administration thereafter issued orders in March, 1961 enhancing the royalty rates from 1st October, 1959, estimated to earn an increased revenue of Rs. 0:75 lakh annually. Non-enhancement of royalty from 1st October, 1957 resulted in a loss of revenue of Rs. 1:50 lakhs (for the period from 1st October, 1957 to 30th September, 1959).

2.41. The Company had paid (March, 1964) one instalment of Rs. 21,142 out of the enhanced royalty of Rs. 75,000 due for the period from 1st October, 1959 to 30th September, 1960. It has been stated by Government that the balance amount would be paid by the Company on 31st March, 1965 and 31st March, 1966.

2.42. Giving a brief history of the case, the Adviser to the NEFA Administration stated that there was a lease drawn in 1921 for 30 years between the company and the Assam State. This lease was due for renewal on 8th July, 1951. By that time NEFA had come into being and the portion of forests in which this company was operating became part of NEFA. In 1949, the Assam Government had been in correspondence with the company and they mutually decided to extend the lease by another 20 years *i.e.* from 1951—1971. In 1951 NEFA actually took over this particular forest area and the draft lease of the Assam State and also the terms and conditions exchanged between Assam State and the company passed on to the NEFA Administration. In January, 1952 the decision was taken that the veneer mill unit might be installed at the place, Namsai in NEFA where company was then located.

2.43. The next phase after January, 1952 was concerned with the royalty question. As regards the details of payment of royalty, the witness stated that in the 30 years lease which had been signed covering the period of 1921—51, one of the clauses provided that royalty would progressively increase after the lapse of every five years and it would be 5 annas per cubic foot in the last five years of the lease *i.e.* during the period 1946-51. So, when the lease was to be renewed on 8th July, 1951, the royalty rate was 5 annas per cubic foot and that continued upto 30th September, 1951. Meanwhile the new schedule of rate was declared by the Assam Government according to which various species of wood were categorised as 'A', 'B' etc. and the rates for veneer species went up ranging between 4½ annas and 7 annas per cft. This new rate came into being and became operative from 1st October, 1951.

2.44. When the Committee enquired whether the original agreement of 1921 continued till 1951, the witness replied in the affirmative. He added that when the original agreement expired on 8th July, 1951, NEFA Administration had to settle the question of payment or royalty because the company was pressing time and again that the rate was high. From 1st October, 1952 the NEFA Administration had raised the rate of royalty to 11½ annas per cft. which remained in force till 31st March, 1954. To this increase in the rate of royalty the company objected on the ground that their finished goods might cost more.

2.45. The Committee enquired as to how the rate of 11½ annas per cft. was determined. The witness stated that the rate of 11½ annas was adopted by the NEFA Administration as it was operating in Assam area. In this matter the Administration followed the rate schedule of the Assam Government which was only the guiding line for the Administration in fixing the rate of royalty subject to certain special consideration in NEFA *e.g.* communication etc.

2.46. The Committee enquired as to how the draft lease which was not signed, was binding upon the Administration. The witness stated that the company was in physical possession of those forests prior to NEFA coming into being. The Assam Government and the company had exchanged certain letters and discussed matters. The legal opinion was that the Administration was bound by the earlier commitment that the Assam Government had made with the company. The Administration had the matter examined by the Legal Remembrancer of the Assam State. According to the legal opinion it was a commitment and the Administration was bound by what the Assam Government had committed.

2.47. The Committee were further informed that between 1952 and 1962 the draft lease was gone into between the NEFA Administration and the company and certain changes were made. The previous draft lease was between the Assam Government and the company. In 1952 when NEFA Administration came into being the Administration went through the draft lease again and decided in 1962 that that was operative upto 1967.

2.48. The Committee are surprised to know that because of change of Administration only, there was a delay of 10 years in finalising the agreement between the Administration and the company. The Committee feel that a delay of 10 years in finalising an agreement with the company cannot be justified on any account. In the absence of any agreement in force, the Administration had to act on the provision of the old agreement which was not legally binding on any of

the parties. The Committee desire that the circumstances leading to such delay in renewing the agreement be examined with a view to fixing the responsibility.

2.49. The Committee enquired as to why the lease was renewed when according to the legal opinion obtained by the Administration in 1952, the draft lease (as drawn up between Assam Government and the company) was binding upon the Administration. The Director of Forests NEFA stated that when the lease was referred to the NEFA Administration by Government of Assam, the Administration felt that the rate of royalty as fixed by the Government of Assam in the draft lease was low in consideration of the fact that the Assam Government had been given 35 per cent of the shares in the company. As NEFA Administration had no shares in the company, it was felt that the whole thing should be revised. However, if the Company had insisted on retaining that agreement, then the Administration would have been in a difficult position.

2.50. The Committee were informed that the agreement which was legally binding on the Administration was ultimately changed by mutual negotiations and a new lease was entered into which was to be operative from 1st October, 1952. The negotiation for the new lease were concluded in 1956. Then it was sent to the Ministries of Agriculture, Law etc. Between 1952 and 1956 there was no agreement and the company was functioning on the basis of mutual understanding. So far as the royalty rate was concerned, there was exchange of letters between the Administration and the company in which the company had agreed to the rate of 11¼ annas per c.ft. The adviser addressed a letter to the company in this respect on 18th November, 1952. Upon this the company represented that that was a very high figure and the Administration should also take into consideration the non-availability of road link. Finally the company accepted the rate in their letter dated 29th November, 1952. Copies of this correspondence has been furnished by the Ministry of External Affairs *vide* their O.M. No. Q/BF/II/7340/15/65, dated the 7th December, 1965 and are at Appendices XI and XII.

2.51. The Committee cannot approve of this *ad hoc* method of a private company working Government properties without any valid agreement but merely on mutual understanding as in the opinion of the Committee such a procedure is not only irregular but also fraught with risks and should always be avoided.

2.52. The Committee were further informed that from 1st April, 1954 to 30th September, 1955 the Administration kept the rate at 11¼ annas per cft. by informal agreement. The justification to continue

the same rate of 11½ annas per c.ft. etc. was that the Assam rate was also 11½ annas. Secondly, the Company was representing time and again that they were not making any profits and emphasized that Namsai was cut off from the places of business. There was also some disruption due to floods during that period. So the Administration kept the royalty at the same level. Then from 1st October, 1955 to 30th September, 1956 it was again as per the Assam Government rate *i.e.* 11½ annas per c.ft. The witness gave the following rates of royalty as fixed from time to time in this case:

Sl. No.	Period	Rate	Remarks
1	1-10-59 to 30-9-60	Re. 1/- per c.ft.	
2	1-10-60 to 30-9-63	Re. 1/6/- per c.ft.	Re. -/6/- per c.ft. wavied due to lack of road link.
3	1-10-63 onwards	Rs. 1/6/- per c.ft.	Irrespective of the consideration of lack of road.

2.53. The Committee enquired about the basis for raising the rate from 11½ annas to Re. 1 from 1st October, 1959. The Adviser to the Governor, NEFA Administration stated that the Assam Government had raised it to Rs. 2 but reduced it to Rs. 1/6/- retrospectively from the 1st October, 1956 in 1959. Upto 1st October, 1956 the Administration was following the Assam Government rates. Even when the Assam Government reduced its enhanced rate of Rs. 2 to Rs. 1/6/-, Administration rate continued to remain at 11½ annas per c.ft. because of the representations from the Company and on the consideration of lack of road link. In their representations, the company were pleading that their finances were not in sound position and that area was quite far off and so transport charges were quite heavy. The Director of Forests (NEFA) stated that the revised rate of Re. 1 from 1st October, 1959 was based on certain figures which the company had given regarding the extra expenditure incurred by the company. The Administration accepted their figures without verifying them.

2.54. In reply to a question the witness admitted that when they checked up the balance sheet of the Company for the year 1958-59,

they did not check it up with the Income Tax return. They accepted the balance sheet as correct.

2.55. The Committee regret to note that the Assam rates of royalty which were followed by the NEFA Administration upto 30th September, 1956 were given up without any reason w.e.f. 1st October, 1956. Further, the profitability of the company and consequently its capacity to pay the enhanced rates was not investigated at the time when the royalty rates required revision w.e.f. 1st October, 1957 and when this was investigated in August, 1960 by the Chartered Accountants it was found that the plea of the company that they were unable to pay enhanced rate of royalty due to the fact that they were incurring loss even on the old rate of royalty, was found to be incorrect. It is all the more surprising that when the Administration increased the rate of royalty from 11½ annas to Re. 1 w.e.f. 1st October, 1959, they went only by the figures which the company had given regarding extra expenditure incurred by them, and the Administration accepted those figures without any verification. The Committee cannot therefore, view with equanimity the various lapses on the part of the Administration *viz.* (i) failure to follow the Assam rates from 1st October, 1956 (ii) non-examination of the profitability of the company and not taking action when it was investigated by the Chartered Accountants that the Company was in a position to pay enhanced royalty (iii) acceptance of the figures of extra expenditure furnished by the Company without any verification and (iv) non-checking of balance-sheet of the company with their income-tax return.

2.56. Explaining further about the increased rate of royalty after 1960, the Adviser to the NEFA Administration informed the Committee that royalty rate from 1st October, 1960 to 30th September, 1961 was 1/6/- but there was a provision for waiver of 6 annas because of lack of road. As soon as the road was made available the royalty rate would rise to Rs. 1/6/- per c.ft. From 1st October, 1961 to 30th September, 1963 it was again Re. 1 and from 1st October, 1963 to 30th September, 1966 the rate was fixed at Rs. 1|6|- irrespective of the availability of road. The road would come up in another year. The royalty rate was increased from October, 1963 as the sale proceeds had gone up.

2.57. The Committee are unable to appreciate the action of the NEFA Administration about the fixation of royalty from time to time. There is neither logic nor consistency in the way the royalty has been fixed. The royalty rate was Rs. 1/6/- per c.ft. from 1st October, 1960 to 30th September, 1961 with a provision of waiver of 6 annas per

c.ft. for lack of road but again from 1st October, 1961 to 30th September, 1963, the royalty was Rs. 1, while from 1st October, 1963 to 30th September, 1966, the rate has again been fixed at Rs. 1|6|- irrespective of absence of road. Although it was stated in evidence that the rate would increase by 6 annas per c.ft. as soon as road was provided, this increase has taken place because of increase in sale proceeds, though the road is not yet there.

2.58. The Committee pointed out that the rate was reduced to Rs. 1 from Rs. 1/6/- per c.ft. by the Administration after they had received the Report of the Chartered Accountant appointed by them which showed that the claim of the company that it was not in a position to bear higher rates of royalty, was not correct. The Director of Forests stated that conclusions of the Chartered Accountant were not absolutely correct. He added that the earning of the company had to be taken into consideration in fixing the royalty, as well as the time taken by the Company to re-establish their sales after they went out of market for five years in 1950 as a result of earthquake which washed out their whole factory.

2.59. When the Committee pointed out that the Chartered Accountant had stated in his Report that the company were not keeping the accounts and proper records to show the extraction expenditure of each variety of timber, the witness stated that the figure of Re. 1 was based on the difference in the cost of extraction as between a mill situated at railhead or within 10 miles of the forests and another mill situated in the forest twenty five miles away from the railhead.

2.60. The Committee then enquired as to how the profits of the company came down from Rs. 2·63 lakhs in 1951 to Rs. 90,000 in 1952. The witness stated that in 1952 there was no work except construction of houses. In 1951 the whole factory was washed away. Upto October, 1952 there was no work in the veneer mill. The Adviser to NEFA Administration gave the figures of royalty paid by the company and the loss suffered by the company as follows:—

1953—Royalty Rs. 1,61,965	Loss Rs. 1,73,279
1954—Royalty Rs. 3,14,523	Loss Rs. 2,98,408
1955—Royalty Rs. 3,84,303	Loss Rs. 97,045
1956—Royalty Rs. 4,09,796	Profit Rs. 19,015
1957—Royalty Rs. 4,00,000	No profit or loss were worked out in that year.

2.61. The witness added that any increase in the royalty, as proposed, would have put the company into liquidation. The cost of extraction was so high because of lack of link road and also due to dislocation caused by the floods. It was for this and other reasons that the NEFA and Assam Government had agreed for the construction of an all weather road. The Financial Adviser, NEFA stated in evidence that there was a nothing in the file where it was stated that the company would have to close the mill if the enhanced royalties were imposed. There was also discussion that it might lead to lot of unemployment in the area.

2.62. The Committee pointed out that the revision of royalty was due in October, 1957 but when the company disputed the rate, a Chartered Accountant was appointed who said that the firm was making profit. But even then it was decided to revise the royalty from October 1959 and not from October, 1957. The Director of Forests stated that according to the balance sheet of the company it was incurring a loss of Rs. 2,20,000 in 1957-58. Upon this, the Committee point out that the Administration did not accept the findings of the Chartered Accountant that the company was in a position to pay but they were going by the balance sheet of the Company. The witness, however, stated that the figures upon which the chartered accountant based their conclusion were wrong. He added that the chartered accountant had taken the market rate of timber at Rs. 3-6-0 but actually the price of timber was not that. The Committee pointed out that in their own letter the Administration had stated that the price at which the timber (logs) was being purchased by the plywood companies in the Upper Assam was not less than Rs. 3-8-0 per c ft. The witness stated that that rate was for delivery at the mills at a railhead. In this case the company was situated 25 miles away from the railhead The rate mentioned in their letter was for delivery at a veneer mill.

2.63. Asked why the Administration did not write to the party if the rate was not Rs. 3-8-0 and the timber required further transportation, the Director of Forests, NEFA stated "We had to justify certain demand which was made." Asked if it was a deliberate wrong statement, the witness stated "We had demanded Rs. 2 we had to justify that." He added "It was a negotiating plea. We know that we could not get that rate."

2.64. The Committee fail to understand as to why the NEFA Administration considered the market rate of Rs. 3|6|- per c.ft. adopted by the Chartered Accountant excessive as they themselves had informed the company that the market rate was not less than Rs. 3|8|- per c.ft. If the Administration considered the rate of Rs. 3|6|- per c.ft. adopted by the Chartered Accountant as too high, they should

have explained the same in detail to the Chartered Accountant giving the reasons therefor. The Committee regret to note that this was not done. The Committee are not impressed by the argument that this rate of Rs. 3/8/- per c.ft. was a 'negotiating plea'. Since there is nothing to support this argument they feel that this is put forward now to cover up their lapse.

2.65. In reply to the question as to what were the reasons for reducing the rate of royalty from Rs. 2 to Re. 1 even when the Chartered Accountant had pointed out that the company was in a position to pay increased royalty, the witness stated that the Administration gave notice of increase in royalty at the rate of Rs. 1-6-0 following Assam Government. Later, in 1959 the Assam Government, however, reduced it from Rs. 2 to Rs. 1-6-0 retrospectively from 1st October 1956. Then a fresh notice was given to the company saying that they also had to pay Rs. 1-6-0. After further consultation the Administration asked them in 1961 to pay at Re. 1 per c.ft. The Administration followed the Assam Government rates for a number of years, but certain other factors and handicaps had to be taken into consideration. The Adviser, NEFA added that in the various draft agreements either with the Assam Government or later on with the NEFA administration, that was the condition that the rate of royalty had to be agreed mutually. It could not be a unilateral decision. Upto 1956 they had the right and they had kept up with the Government of Assam royalty rates. When the Committee pointed out that according to the signed documents the royalty may be revised by the lessor after discussion with the lessee, the witness stated that this clause was added by the Administration in 1960 after legal opinion was obtained. The Committee then pointed out that though the Chartered Accountant's findings were in favour of the Administration, the enhanced rate was not charged. Instead it was reduced to Rs. 1-6-0 from Rs. 2. The Director of Forests stated that even before the Chartered Accountant came in the picture, they had issued revised notice to the company asking them to pay Rs. 1-6-0 following the Assam Government rate. In 1959 Assam adopted that rate *viz.* Rs. 1-6-0 per c.ft. with retrospective effect from 1st October 1956.

2.66. The Committee then desired to be furnished with a copy of the letter dated 31st December 1964 addressed to A.G.C.R. with regard to the report of Chartered Accountant wherein it was pointed out that his conclusions were based on inadequate date. This has been furnished. (Appendix XIII).

2.67. Coming to the question of incomplete examination of records by the Chartered Accountant (who had stated that all the records

at Namsai could not be checked) the witness stated that there were two head offices one at Dibrugarh and the other at Calcutta. After a certain time all the records were sent to those two places. The Committee then pointed out that according to the report of the Chartered Accountant, due to lack of communications and as per the directions from Director of Forest, the Chartered Accountants could not go to Namsai. All the records thus could not be checked and therefore examination was limited to Calcutta and Dibrugarh. As such the Administration could not blame the Chartered Accountant for this incomplete examination. The witness stated that the Accountant could not go because of floods. Asked if the Accountant was advised to go later, the witness stated that the whole report would then have been delayed.

2.68. The Committee regret to note that while in fixing the royalty rates, the Administration wholly depended on the figures supplied by the company and claims made by them without any complete or proper verifications; they totally ignored the findings of the Chartered Accountant specially appointed by them to look into the affairs of the company.

2.69. What is more objectionable, is the fact that in rejecting the findings of the Chartered Accountant, the Administration took up the argument that the examination was not complete and Government of India justified that action to Audit by criticising the findings of the Accountant, whereas the Accountant was prevented from examining the complete records, being asked not to go to Namsai.

2.70. In view of the fact that the Chartered Accountant's report was not acceptable to the NEFA Administration and further in view of the fact that the Administration did not verify in detail the figures of extra expenditure supplied by the company, for determining their claims for royalty, the Committee feel that the working of this contract needs thorough and independent investigation. The Committee, therefore, suggest that the working of this contract should be investigated in detail taking into consideration the reports of the Chartered Accountant, the balance sheets of the Company, and the Income Tax returns of the company with a view to finding out whether the rates of royalties were fixed correctly from time to time.

2.71. Asked if the royalty could be further increased on completion of the road if the company made further profits, the Director of Forests stated that it could be increased, but if the company did not agree, then the matter would have to be referred to a Board of Arbitration. When the Committee pointed out that

agreement the rates could be raised unilaterally by the Administration, the witness stated that according to the legal opinion, the Administration being the beneficiary could not have the right to increase the rate unilaterally as then the other party would have no protection for itself. The Committee wanted to know, if the position that the increase in rates is to be negotiated, had been accepted by the Government of India. The witness stated that this point was not specifically referred to the Government of India. They sent a copy of the agreement to the Government of India, and the Ministry of Law approved the same.

2.72. The Committee strongly deprecate the tendency as has been quite evident in the present case to continue to act on old agreements/contracts which had expired without entering into new ones resulting in a loss of public revenues. They desire that the Ministry of Finance should issue suitable instructions on the subject so that this tendency is totally curbed.

2.73. The Committee then enquired about the position of arrears. The witness stated that the company were to pay the arrears in three instalments of Rs. 21,000 each. Two instalments had already been paid according to the orders of the Administration. The Third instalment was due to be paid within 31st March, 1966. The company were paying the current dues regularly.

2.74. In reply to another question the witness stated that the present lease agreement would expire on 30th September, 1967. The Committee suggest that on expiry of this lease, a fresh agreement may be entered into after inviting open tenders. Necessary action in this connection may be initiated well in advance. The rates prevalent in the neighbouring areas of Assam should also be duly taken into consideration when fixing the rate of royalty. The agreement should also include a clause regarding revision of royalty rates at intervals of 3 to 5 years.

Ministry of Home Affairs

Arrears of Sales Tax of Delhi Administration, para 86, *pages* 84-85:

2.75. The position of arrears of tax demands both under the Central and Local Act as on 1st April, 1964 was as shown below:—

(In lakhs of Rupees)

	Local	Central
As on 1-4-1963	95·14	11·61
Demand raised during the year 1963-64 . .	·37·93	19·00

Collection during the year 1963-64 . .	32·06	13·26
Adjustment by write off during the year 1963-64	10·17	3·45
Readjustment due to rectification of errors .	(—)00·19	(+)0·67
Balance Arrears on 1-4-64	90·65	14·57

There were 27 cases in which the amount due from individual dealers was more than Rs. 50,000 and the total amount involved in those cases was Rs. 48.20 lakhs.

2.76. The Department informed Audit that out of the amounts the effective recoverable arrears both under Local and Central Act as on 1st April, 1964, were only to the extent of Rs. 30.72 lakhs and Rs. 11.67 lakhs respectively, the balance of Rs. 59.93 lakhs and Rs. 2.90 lakhs being accounted for as under:—

(In lakhs of Rupees)

	Local	Central
(i) Recovery stayed by High Court . . .	4·17	00·69
(ii) Amount involved in insolvency cases .	1·38	00·18
(iii) Amount proposed to be written off . .	54·38	02·03
	59·93	02·90

2.77. The year-wise break of the outstanding amount exceeding Rs. 50,000 is as follows:—

(In lakhs of Rupees)

Year	Local	Central
1952-53 to 1957-58	41·00	00·54
1958-59	1·35	00·62
1961-62	..	00·90
1962-63	00·39	..
1963-64	3·40	..
	46·14	02·06

2.78. The Committee desired to know the reasons for the proposal to write off Rs. 56·41 lakhs, a large proportion of the arrears. The Chief Commissioner informed the Committee that the question of Sales Tax arrears and collections in Delhi had figured before the P.A.C. last year. The main reason was that a large number of people who were not dealers at all had registered themselves as dealers liable to Sales Tax. Though sales were made to the public yet in order to get away from sales tax, the transactions were shown as transfers from dealers to dealers who were not in existence at all. The staff employed were inexperienced and did not know the intricacies of the sales tax. While the adjustments and arrears were being worked out it was found that most of the firms were bogus and nonexistent and therefore, recovery of arrears became a problem. Orders laying down the conditions of write off had been received from the Ministry of Finance in May, 1964 and the process of write off of was proceedings. A sum of Rs. 13:65 lakhs had been written off during the period between 1st April, 1964 and 31st May, 1965.

2.79. On being asked about the Delhi Sales Tax Bill, the Chief Commissioner stated that on the loopholes being noticed in the Sales Tax Act, an amending Bill had been drawn up and was likely to be introduced in the Parliament soon. That would make the people liable to pay sales tax in cases of transfer of business, dissolution of firms etc. Provision had also been made for penal action such as retaining registration certificates, demanding security from new dealers, cancellation of registration etc. Cancellation was provided, if the dealers were at fault, or if they gave false declaration or did not give security.

2.80. In reply to a further question, the Committee were informed that an assessment on Bharat Sevak Samaj had been completed. A sum of Rs. 35,000 was outstanding as on 1st July, 1965. Out of the total amount of Rs. 75,000 against the Samaj, a sum of Rs. 35,000 was outstanding as on 1st July, 1964 against Bharat Sevak Samaj. The Samaj was paying the amount in instalments of Rs. 2,500 per month.

2.81. In reply to a further question, the witness stated that a sum of Rs. 14 lakhs had been written off and the balance to be written off was Rs. 40 lakhs.

2.82. On being asked as to how a person could be called a bogus dealer, when the person concerned had to furnish his return on sales tax due from him, the Commissioner of Sales Tax, Delhi informed the Committee that a dealer was required to pay sales tax only on his sales to a consumer or to an unregistered dealer. The position

was that the sale from one dealer to another was not liable to sales tax. The bogus dealers by their false declarations to certain wholesalers had shown that they had purchased goods from them when actually the bogus dealers had not made any purchases, and the wholesale dealer had actually effected their sales to other unregistered dealers who should have been charged to sales tax. There were other bogus dealers also who had shown that they were not liable to any sales tax because they had effected their sales to other registered dealers also. It was found on verification by the Department that the dealers had not effected sales to registered dealers and hence the demand was raised, as they were liable to pay sales tax.

2.83 The Committee drew the attention of the witness to para 76 of their 28th Report (Third Lok Sabha) and desired to know the position regarding the question of shifting the burden of sales tax from the last to the first point in respect of more commodities in order to prevent evasion of tax. The Chief Commissioner informed the Committee that action was being taken progressively to shift the burden of sales tax from the last to first point and that had been done in the case of cement, tyres and tubes, motorcycles etc. during this year. Other items were under consideration.

2.84. The Committee note that out of the arrears of Rs. 51.38 lakhs stated to be irrecoverable, a sum of about Rs. 14 lakhs has been written off so far. The Committee also note that the need for writing off arose because of the bogus dealers coming into existence for the purpose of evading sales tax liability. In this connection the Committee would like the administration to investigate and make special efforts to find out whose nominee these bogus dealers were *i.e.*, who had created them for evading sales tax.. It is only thereafter that the question of write off should be considered.

2.85. The Committee also desire that the Bill to amend the Delhi Sales Tax Acts should be finalised early, so that loopholes in the administration of Sales Tax may be plugged. The Ministry of Home Affairs should also keep under review the question of shifting the burden of sales tax from the last to the first point in respect of more commodities in order to prevent the evasion of tax. The Committee also suggest that a census of dealers registered under the Sales Tax Act should also be taken periodically with a view to detect bogus dealers.

2.86. The Committee note that in pursuance of the recommendations made in para 76 of their 28th Report the Ministry are taking certain remedial measures to prevent accumulation of arrears of

sales tax and current demands. They hope that the matter will be kept under review. The Committee would like to watch the progress made in this matter through future Audit Reports.

Ministry of Food & Agriculture
(Department of Agriculture)

Arrears of Land Revenue in the Union Territory of Delhi--Para 87, page 85.

2.87. The position of arrears of Land Revenue in the Union Territory of Delhi as on 1st April, 1964 is given below:—

Year	Amount Rs.
(1) Arrears of Land Revenue on 1-4-1963	39,76,879
(2) Demand raised during 1963-64	Nil
(3) Collection during the year	4,76,342
(4) Adjustment and write off etc. during the year	Nil
(5) Balance arrears on 31-3-1964	35,00,537
(6) Effective arrears out of (5)	19,33,729

The Department informed Audit in January, 1965 that the demand for the year 1963-64 had not yet been assessed for want of certain statements which were stated to be under preparation.

2.88. Explaining the reasons for arrears in collections, the Deputy Commissioner, Delhi, stated that arrears accumulated during the period 1954 to 1964. After the introduction of land reforms in July, 1954, the entire record of rights of the new Class of proprietors had to be prepared afresh. Implementation of these reforms was unfortunately delayed because of the stay orders issued by the High Court as a result of a writ petition. It took sometime to get these High orders vacated. The land reforms, therefore, could not be implemented before 1960. The work relating to the preparation of the

thing. In reply to a question, the witness stated that in the non-flood areas they hoped to recover the whole amount in four years and in the flood areas in eight years.

2.90. The Committee trust that arrears of land revenue would be recovered promptly and that such arrears would not be allowed to accumulate in future.

III

GENERAL

While examining the Audit Report (Civil) on Revenue Receipts, 1965, the Committee came across a few unsatisfactory features of the administration of tax laws. In this connection, they would like to draw specific attention to the following paragraphs of their Report.

I. *Dilution of authority of Parliament by executive fiat—Paras 3.208—3.216 of Forty-fourth Report of the P.A.C.* (1965-66).

3.2. (a) In that case fixation of the lower tariff value resulted in less collection of excise duty on carbon dioxide and cellophane to the extent of Rs. 10·74 lakhs and 4·85 lakhs respectively. Apart from the loss of revenue suffered by Government, the firing of the lower tariff rates amounts to forestalling Parliament's intention by Executive fiat. In this connection, the Committee would also like to invite the attention of the Government to Para 61 of their 27th Report where they had come across a similar case of fixing of tariff value of motor vehicles.

3.3. (b) In Paras 3.33 to 3.40 of their Forty-fourth Report (1965-66) the Committee have commented upon a case involving non-levy of additional excise duty on jute batching oil. In that case the Board of Excise and Customs issued a notification giving retrospective effect to the exemption and that resulted in foregoing a duty of Rs. 33·40 lakhs. The Committee also noted the opinion of the Ministry of Law that Government notifications could not be given retrospective effect in such cases unless that power was expressly conferred by the Statute. Even the witness agreed that the issue of the notification giving the retrospective effect to exemption was only a practical expediency and that under the powers delegated by the Parliament, exemption could be allowed only prospectively.

II. *Non-carrying of the intention of Parliament as per letter of law.*

3.4. In paras 2.3 to 2.8 of this Report the Committee have commented upon a case where a loss of revenue to the extent of Rs. 10·71 lakhs has taken place due to short levy of tax under the Delhi Motor Vehicles Taxation Act, 1962. This took place as the Delhi Adminis-

tration did not levy tax in accordance with the schedule appended to the act as passed by the Parliament in cases of vehicles having laden weight of 10 tons and above. This had to be regularised subsequently by an amendment to the Act by Parliament.

III. *Non-implementation of the intentions of Parliament by not framing rules.*

3.5. The Cotton Fabrics (Additional Excise Duty) Act, 1957 was enacted by Parliament so as to provide for the levy and collection of additional duty of excise in those cases where the quantity of cotton fabrics exported by any mill in any year fell short of export quota in that year. The provisions of the aforesaid Act could not be brought into effect even after the expiry of a period of seven years as the rules for the carrying out the purposes of the Act had not been framed by the Government. The Committee have commented in detail on this case in paras 3.235 to 3.260 of their 44th Report. Delay in framing the rules thus, negatived the expressed intentions of Parliament and side-tracked its authority.

3.6. The Committee take a strong exception to the dilution of the authority of Parliament by executive fiat and/or to the non-carrying of the intentions of Parliament as per the letter and spirit of law. The Committee desire that the Acts passed by the Parliament should be implemented fully in letter and spirit. If however, some difficulties arise in implementing an Act, the Executive should approach the Parliament promptly with suitable amendments to the statutes. The Committee also desire that the Ministry of Finance should issue suitable instructions in this regard.

3.7. Another disquieting feature pointed out by the Committee in paras 3.173 to 3.175 of their 44th Report is regarding lack of uniformity in administration of tax laws. Different officers sometimes give different interpretations of the law with the result that citizens may be taxed differently under the same statute. This obviously amounts to executive discrimination. The Committee cannot over emphasize the basic need of ensuring that under the same statute and at the same time, people are not charged different rates of tax due to different administrative interpretations or other failures.

NEW DELHI;
March 10, 1966.
Phalguna 19, 1887 (*Saka*).

R. R. MORARKA,
Chairman,
Public Accounts Committee.

APPENDICES

APPENDIX I

MINISTRY OF FINANCE

(Department of Revenue)

Further information required by the Public Accounts Committee at their Sittings held on the 15th to 21st October, 1965 on the Audit Report (Civil) on Revenue Receipts, 1965.

Item 24 para 59, Results of test audit in General

A statement showing how much of the under assessment of tax pointed out by Audit and accepted by Government in the Audit Report, 1962, 1963 and 1964 has since been realised by Government.

Reply of the Ministry:

The information was called for from the Commissioners of Income-tax. So far only 22 Commissioners have furnished the information. The information received so far indicate the following position:—

(Figures in lakhs of rupees)

Audit Report	Amount realised
1962	
1963	57·61
1964	59·83

Complete information in respect of all the charges will be furnished to the Committee soon.

S. A. L. NARAYANA ROW,
Joint Secretary to the Govt. of India.

APPENDIX II

MINISTRY OF FINANCE

(Department of Revenue)

SUBJECT:—*Paragraph 62 (a) of the Audit Report (Civil) on Revenue Receipts, 1965—Failure to apply the provisions of the Finance Acts properly—*

Regarding the above, the P.A.C. desired that

> "a note may be furnished about the way the Income-tax Officer concerned interpreted the law in the four cases during the period he was in charge of these cases".

2 The PAC also desired to know what was the treatment given by the same I T.O. in the other cases in his charge. Was the relief regarding section 99 (1) (iv) dividends in the other cases of his charge granted on the basis of the average rate or the flat rate?

A note (Annexure) explaining the whole position is enclosed for P A C.'s information.

S. A. L. NARAYANA ROW,

Joint Secretary to the Govt. of India.

Min. of Fin (Deptt of Rev) F. No 36/28/64-IT (AI) (II), dated 10-11-1965.

ANNEXURE

MINISTRY OF FINANCE

(Department of Revenue)

Para 62(a) of the Audit Report, 1965

In the cases of the four companies there were certain intercorporate dividends on which super-tax was not payable u/s 99(1) (iv) of the Income-tax Act, 1961. Sec. 99(1) (iv) (as applicable for the above years) says that super-tax shall not be payable by an assessee in respect of certain intercorporate dividends included in the total income. Sec. 110 says that where there is included in the total income of an assessee any income on which no super-tax is payable, the assessee shall be entitled to a deduction from the amount of the super-tax of a sum equal to the super-tax calculated at the 'average rate of super-tax' on the amount on which no super-tax is payable. The 'average rate of super-tax' was defined in section 2(11) as meaning the rate arrived at by dividing the amount of super-tax calculated on the total income by such total income. The Income-tax Officer has, therefore, allowed the super-tax relief on intercorporate dividends at the *average* rate.

2. The interpretation of the Income-tax Officer was in conformity with the provision of law and this interpretation is further supported by the decision of the Bombay High Court in the case of Burma Shell Refineries Ltd. (56 ITR 310).

3. It has been reported by the Commissioner that the Income-tax Officer has given relief u/s 99(1) (iv) at the average rate in all cases in his charge and rebate at flat rate has not been granted in any case.

APPENDIX III

MINISTRY OF FINANCE

(Department of Revenue)

Items on which the additional information is required.

What is the result of the action for rectification?

Page 59, para 67 of the Audit Report (Civil) on Revenue Receipts, 1965—Irregular set off of losses.

Action taken by Government.

The assessments have since been revised. Rectification has been made by allocating the firm's total income between the partners. The speculation loss has been ignored for this purpose. No additional demand was raised in the case of the firm itself but the rectifications in the partners' cases have resulted in an additional demand of Rs. 24,065, which has been collected.

S. A. L. NARAYANA ROW,
Joint Secretary to the Govt. of India.

M/F (Deptt. of Revenue) F. No. 36/14/64-IT(AI), Dated 11-10-1965.

APPENDIX IV

MINISTRY OF FINANCE

(Department of Revenue)

Points on which the Public Accounts Committee desired to be furnished with further information at the sittings held on 15-10-65 *to* 21-10-65.

Information required by the Committee.

(1) In how many cases out of 130 the amount in excess of the sum claimed was incorrectly allowed and what was the amount of tax under-assessed?

(2) How did this mistake take place?

Para 71(b) *of the Audit Report (Civil) on Revenue Receipts,* 1965 *(Irregular exemptions).*

Action taken by Government.

There are about 40 cases mentioned by the Audit which fall under the above-mentioned category. Full particulars in respect of these cases have been called for from the Commissioners of Income-tax concerned and their replies are still awaited. The requisite information will be furnished as soon as the same is received.

S. A. L. NARAYANA ROW,

Joint Secretary to the Govt. of India.

Ministry of Finance (Deptt. of Revenue) F. No. 36/34/64-IT(AI), dated -11-1965.

APPENDIX V

MINISTRY OF FINANCE

(Department of Revenue)

Points on which the Public Accounts Committee desired to be furnished with further information at the sitting held on 15th October, 1965 to 21st October, 1965.

Para 75 (a) of the Audit Report (Civil) on Revenue Receipts, 1965 (Other lapses).

Information required by the Committee.

What is the explanation of the I.T.O. who failed to gross up dividends correctly?

During the discussions the P.A.C. also desired to be furnished with the results of further enquiries regarding the possibility of prosecuting the officials of the Companies concerned for giving false certificates.

Action taken by Government.

The facts ascertained regarding the cases of M/s.****and M/s. **** (other two companies) are as follows:—

The above two companies are shareholders of ****. From the details of the assessments in the case of M/s. ****, it appears that the book profits, total income and the dividend declared were as follows:—

Assessment year	Book profits	Assessed profits	Dividend declared
1957-58	3,34,27,250	3,95,86,230	1,06,12,000
1958-59	3,10,70,840	3,19,89,747	1,06,12,000

The dividends declared in respect of these two years are assessable in the hands of share holder companies in the assessment years 1957-58, 1958-59 and 1959-60.

It would appear from the above particulars that in each year the dividend declared is much less than the book profits. The assessed profits are also more than the book profits though it is true that the depreciation actually allowed to the Company is more than what the Company had charged to its profit and loss account. There is nothing to show that the Company had not paid tax on its entire profits out of which the dividends were declared. However, as a result of objection by the Revenue Audit, the assessments in both the cases were revised by the Income-tax Officer for the assessment year 1959-60. Both the Companies appealed against the order of the Income-tax Officer and the A.A.C. has given them relief as he has held that the book-profits and the assessed profits of the dividend paying company being much higher than the amount of dividend declared it could not be said that any part of the dividend has been distributed out of untaxed profits. The A.A.C. therefore held that grossing up of the dividend at 100 per cent instead of 97.2 per cent was correct. Though the C.I.T. is contesting the correctness of A.A.C.'s order before the Tribunal, from the facts stated above it would be clear that there could not be any case for holding that M/s. ****, had given any false certificate as the certificate is correct on the basis to the book-profits of the Company.

2. Full facts regarding the case of **** (first non-resident company) are being collected and a further note will be submitted to the Public Accounts Committee as soon as they are received.

S. A. L. NARAYANA ROW,
Joint Secretary to the Govt. of India.

APPENDIX VI

MINISTRY OF FINANCE

(Department of Revenue)

Further information required by the Public Accounts Committee at their sittings held on the 15th to 21st October, 1965 on the Audit Report (Civil) on Revenue Receipts, 1965.

Item 30 Para 75(b)—Other lapses

It was stated in evidence that in one of the five cases in which over Rs. 3 lakhs was involved, the income-tax officer had obtained the permission of the Inspecting Assistant Commissioner to waive the interest. A note may be furnished stating whether the interest was waived before the audit report or after the receipt of the audit report.

Reply of the Ministry

It has been reported by the Commissioner of Income-tax, West Bengal-III, Calcutta that the approval of the Inspecting Assistant Commissioner of Income-tax for waiving the interest chargeable under section 18A(6) was obtained on 31st March, 1964 whereas the audit objection in this case was raised by the Revenue Audit Party during the period 17th July, 1964 to 28th July, 1964.

S. A. L. NARAYANA ROW,
Joint Secretary to the Govt. of India.

APPENDIX VII

MINISTRY OF FINANCE

(Department of Revenue)

Points on which the Public Accounts Committee desired to be furnished with further information at their sitting held on 20th October, 1965.

Point raised by the Committee

A note may be furnished stating how the mistake in this case occurred and whether an enquiry has been made into the matter by the Commissioner.

Action taken by Government

Para 75(e) of the Audit Report, (Civil) on Revenue Receipts, 1965.

The above case was being assessed at Motihari in Bihar. The assessment for 1957-58 was completed on 28th January, 1958 and the total amount payable was determined at Rs. 7,922.37. Against this demand, the following payments were made by the assessee:—

	Rs.
31-10-56—Advance Tax	300·00
29-3-57—Advance Tax	504·25
20-12-57—Provisional Assessment Tax	282·19
TOTAL	1086·44

2. With the transfer of jurisdiction over Wealth tax assessees to Income-tax Officer, Muzaffarpur the file was transferred from Income-tax Officer, Motihari to Income-tax Officer, Muzaffarpur on 26th November, 1958. For the assessment year 1957-58 there was an outstanding demand of Rs. 6,835.93 and this demand should have been transferred to Income-tax Officer, Muzaffarpur. However, this demand was not shown as outstanding in the transfer memo and the only demand which was shown as outstanding was a demand of

Rs. 20,011.43 for the assessment year 1956-57. The case was re-transferred by Income-tax Office, Muzaffarpur to Income-tax Officer, Motihari on 29th July, 1961 and naturally in the transfer memo no outstanding demand for 1957-58 was shown. Thus, when the case was received back at Motihari, no outstanding demand was shown for the assessment year 1957-58. As a result of appellate orders, the demand was reduced from Rs. 7,922·37 to 5,179·89. At that time it was taken for granted that no demand being outstanding for the assessment year that total demand of Rs. 7,922.37 must have been paid. After allowing this credit to the assessee a refund of Rs 2.742.48 was granted In fact, as the total payments made by the assessee had been only Rs 1,086·44. The actual excess refund amounted to Rs 6,835.93. This mistake was pointed out by the audit and the excess refund was recovered by adjustment against the other refunds due to the assessee on 15th November, 1962.

2. The mistake, thus, took place when the outstanding demand of Rs 6,835.93 was not shown in the transfer memo dated 26th November, 1958 when the file was transferred from Income-tax Officer, Motihari to Income-tax Officer, Muzaffarpur. However, in the Demand and Collection register, the outstanding demand was shown as transferred to Income-tax Officer, Muzaffarpur. Thus, the mistake occurred in omitting to mention in the transfer memo the outstanding demand which was being shown as transferred in the Demand and Collection register. In respect of the demand of another year which was also shown as transferred in the Demand and Collection register, the transfer memo had been correctly filled and the demand was taken over by the Income-tax Officer Muzaffarpur.

4 It has been reported by the Commissioner that on the basis of enquiries made by him the indentity of the person who prepared the transfer memo dated 26th November, 1958 has not yet been fully established but the Commissioner is making further enquiries and he hopes to be able to establish the concerned person's identity soon. He will then call for the explanation of the official concerned and take action against him The Commissioner is also making enquiries regarding the person who prepared the assessment form at the time when the refund was granted Suitable action will be taken against the officials found responsible for the lapse.

G. S. SRIVASTAVA,

Joint Secretary to the Govt. of India.

Min of Finance (Deptt. of Revenue & Insurance) F. No. 36/31/64-IT(AI), dated -2-196

APPENDIX IX

MINISTRY OF FINANCE

(Deptt. of Revenue)

Additional Information required by the Public Accounts Committee on Central Government Audit Report (Civil) on revenue receipts, 1965.

Item 23: *Pages* 76-77, *Para* 80: *Arrears of tax demands.*

(1) Out of the arrears of Rs. 277:76 crores, what are the effective arrears?

(2) Details of amounts due from the following categories may be furnished;

(a) Due from companies under liquidation,

(b) Due from persons who have left India,

(c) Covered by certificates to Tax Recovery Officers of State Governments.

(3) The Year-wise and charge-wise break-up of the gross arrears of Rs. 277.76 crores may be furnished.

(4) The amount which is proposed to be written off out of these arrears, for the reasons given in para 79 of the Audit Report, 1965 may be furnished.

Reply of the Ministry

(1) The figure of gross arrears of Rs. 277·76 crores given in the Audit Report, 1965 were only provisional figures. The final figures after checking by internal audit parties are now available. According to these figures, the gross arrears of Income-tax as on 31-3-1964 amounted to Rs. 282.37 crores. The effective arrears work out to Rs. 161.41 crores *vide* the statement at Annexure 1.

(2) (a) Amount due from companies under liquidation — Rs. 6.77 crores.

(b) Amount due from persons who have left India — Rs. 7.54 crores.

(c) Amount covered by certificates to tax recovery officers of State Governments. — Rs. 157.70 crores.

ANNEXURE I

Statement showing the effective arrears of Income-tax as on 31-3-1964.

(Figures in crores of Rs.)

Gross demand outstanding		282·37
Deduct amount not fallen due		54·49
Balance		227·88
Less deduction expected on account of—		
(i) Double Income-tax Relief	3·40	
(ii) Appellate Relief	13·35	
(iii) Protective assessments	4·11	
		20·86
		207·02
Break-up of the total demands in arrears		
Irrecoverable demand		
(a) From persons who left India	7·54	
(b) From Companies under liquidation	6·09	
(c) From cases pending before Collectors	31·98	
		45·61
Recoverable demand		161·41

ANNEXURE II

Commissioners' Charge	Arrears of 1953-54 & earlier years	Arrears of 1954-55 & 1961-62	Arrears of 1962-63	Arrears of 1963-64	Total
	(Figures in thousands of rupees)				
Andhra	4209	21164	9740	33014	68127
Assam	2038	7036	3078	15235	273 87
Bihar & Orissa . . .	4932	26544	11334	33612	76422
Bombay City I . . .	28074	100641	28467	67411	224593
Bombay City II	52570	80740	27138	75329	235777
Bombay City III . . .	28627	62201	21104	75678	187610
Bombay Central . . .	15986	75137	26064	28884	146071
Poona	6913	16825	5790	25223	54751
Delhi	27442	53274	15000	27770	133486
Delhi Central . . .	..	28384	8803	31023	68210
Gujarat	865	18039	7566	44927	71397
Kerala	2142	16034	4570	21809	44555
Madhya Pradesh	2866	51093	18062	36471	108492
Madras	10155	31966	13339	66374	121834
Mysore	1468	11985	8293	34049	55795
Punjab	6118	10611	8731	27946	53406
Uttar Pradesh . . .	36540	55158	11700	44257	14765 5
West Bengal	125912	297554	104582	228786	756834
Calcutta Central . . .	32653	103341	33783	71503	241280
TOTAL . .	389510	1067727	367144	999301	2823682

APPENDIX X

MINISTRY OF FINANCE

(Department of Revenue)

Item 34 *Para* 82—*Refunds*:

(i) In how many cases interest totalling Rs. 14,000/- was paid? What is the highest amount of interest paid?

(ii) What are the reasons for delay in settlement of refund cases which have been outstanding for more than 2 years?

Reply of the Ministry

(i) The information *has been called for from the Commissioners and the same will be furnished to* the Committee as early as possible.

(ii) There were 59 refund applications which were outstanding for two years or more on 31.3.64. Information has so far been received from the Commissioners of Income-tax regarding 56 applications. It has been reported by the Commissioners that out of these 25 applications have since been disposed off leaving a balance of 31. *The reasons for the pendency have been called for from the Commissioners of Income-tax and will be furnished to the Committee soon.*

S. A. L. NARAYANA ROW,
Joint Secretary to the Government of India.

APPENDIX XI

Copy of D.O. letter No. F.30/51 dt. 20-11-1952 from Shri R. K. Rustomjee Adviser to Governor of Assam & NEFA to Shri P. Mukherjee, Assam Saw Mills and Timber Co., Ltd., Calcutta.

With reference to our discussions on the 8th of November regarding the Lease proposed to be granted to the Assam Saw Mills and Timber Co. Ltd., this is to confirm that we should be prepared to consider fixing the royalty rate at -/11/6 per cft. for veneer timber and timber placed in class A of Schedule B for the period October the 1st 1952 until March the 1st 1954. The royalty rate of -/11/6 per cft. will apply during the above period, to logs of all girth as may be considered utilisable for veneer and sawn timber in terms of clause 2(vii), (page 7) of the Draft Lease. The Company would thus be given ample time, under the above arrangements, to lay down its policy and make its plans for the future, pending the refixing of the royalty rate for a three-year-period taking effect from March the 1st 1964. Some slight modification in the wording of clause XII at page 9 of the Draft Lease will be necessary to provide for the implementation of the above proposal.

The other points raised in Mr. Steven's letter No. L & R/19 (N)-52/269 dated 3rd/5th November, 1952, are under examination and a further communication will follow in due course.

APPENDIX XII

Copy of letter No. ASM dated the 29th November, 1952 from Shri P. Mukherjee, Assam Saw Mills and Timber Co., Ltd, Chartered Bank Buildings, Calcutta-1 to Shri R. K. Rustomjee, Esq., Adviser to the Governor of Assam, North East Frontier Agency, Shillong.

I acknowledge with thanks receipt of your D.O. letter No. F. 30/51 of 20th November.

I have put your proposal before the Board of Directors of this Company and they consider that they are prepared to accept the rate of -/11/6 per cft. royalty provided that—

(a) the period before any further change is made is extended to 31st March 1954 as this is the half year of the Company, and

(b) six months' notice of the change with information as to what the altered rate will must be given, *i.e.* we must know by 30th September 1953 what your royalty rate will be for the 3 year period commencing 1st April 1954, for preferably to enable us to work on a standard royalty basis for the complete financial years in future, we would suggest that the royalty is re-fixed for 3½ years from 1st April 1954.

Although we are accepting your offer so that we can proceed with production at Namsai without the complete uncertainty which now exists, we draw your attention to the fact that the estimated cost of producing panels this year with a royalty rate of -/11/6 works out at Rs. 8/1/- per set and we have decided to quote Rs. 7/12/- per set of 24" × 19" panels other sizes being at *pro rata* reduced rates.

The Assam Railway & Trading Co. are quoting Rs. 7/4/- for an equivalent set of panels and their panels are as good as ours. As a result we have had refusals of our offer of panels from several customers who have taken our panels for years because the present slump in tea is causing than to consider price above everything else, and in fact certain companies in Calcutta are quoting Rs. 6/12/- per set.

The Assam Railway & Trading Co. have not only the advantage of a -/7/- royalty rate but are producing 5 lakhs or more sets of panels, and we must take it very clear to you that in accepting the offer you have made we do so under protest, and must insist that you realise the serious handicap under which you are forcing us to do business, a handicap which if continued permanently, can only in the end affect your revenue as well as our profit.

One other point we must make clear and that is that you agree that future rates will by and large be in line with the royalty rates imposed on our competitors who extract timber whether operating in Assam or elsewhere.

I note that the other points raised by Mr. Steven in regard to lease conditions will be clarified by a further letter from you.

APPENDIX XIII

Copy of letter No. N-1/745/1/64 dt. 31-12-1964 from the Ministry of External Affairs to the Accountant General, Central Revenues.

No. NI/745/1/64

To

The A.G.C.R.,
New Delhi.

SUB: Draft para on loss of revenue in the Forest Department of NEFA.

Sir,

As desired by the A.G., Assam and Nagaland, Shillong in his telegram No. Re. 11/523 dated the 25th December, 1964 the Ministry's comments on the Draft Para sent by the A.G. Assam and Nagaland are given:—

1. The Draft Para appears to have been based on the report of the Chartered Accountants entrusted with the examination of the affairs of Assam Saw Mill and Timber Co. from 1-10-53 to 31-1-59 in March, 1960. The conclusions of the Chartered Accountants were based on inadequate date as was admitted by them in their report. In the absence of proper records to show the extraction of each variety of timber, they took the total expenses incurred in the extraction of the timber of all the variety added together and the total timber extracted to arrive at an average cost of per cft. The local Administration have held that the assumption was erroneous and tended to be highly exaggerated and was without valid facts of the case for the following considerations:

(a) The quantity of timber shown as extracted included both veneerable and non-veneerable species whereas the value of the logs has been assessed at the rates fixed by the Assam Government for veneerable logs, which are much higher priced than non-veneerable logs.

(b) The price of veneerable logs is for delivery of selected logs in the Plywood Mills, which are generally situated at railhead whereas a lease-holder is assessed royalty and

has to bear the extraction charges for all timber, good, bad or indifferent and the Mill is situated 25 miles away from Railhead.

(c) This is the only Company using Hollock for veneering purposes; but as outturn of veneer in the case of Hollock, is about 50% of that of Hollong, for which the price fixed by the Assam Government is Rs. 3.37 the price of Hollock should, therefore, be about half of that at which calculation has been made by the Chartered Accountants.

(d) The total quantity of logs shown as extracted by the Chartered Accountants also includes a very large proportion of Hollock species which in so far as plywood manufacture is concerned can be taken as equal only to half the price of Hollong and Mekai logs as the outturn of Veneers from Hollock is only half of that from Hollong-Mekai species. The timber extracted also includes other inferior species which are not suitable for plywood production at all. This factor also, therefore, vitiates the calculation of the Chartered Accountants. It is also observed that the company saved a sum of Rs. 24.50 lakhs during the period from 1953-59 was based on cost calculations and cost accounting without reference to the audited accounts of the Company which disclosed considerable losses during the relevant periods. In other words there was no reconciliation between the cost accounts and the financial accounts and the conclusions drawn cannot therefore, be upheld.

(e) Consequent upon the increase in the rates of royalty by the Assam Government, the Company was served with a notice on 25-9-57 to pay increased royalty w.e.f. 1-10-57. The Company on the ground of continuing losses in its operation expressed its inability to pay royalty at the enhanced rates. According to published accounts the losses of the company during the period from September 1954 to September, 1959, amounted to Rs. 9,95,034. The local Administration sought the approval of the Government about the royalty that might be charged from the Company. The necessary approval to the royalty rates being fixed after taking into consideration the various factors was that the enhanced rates of royalty might not kill the Company, was conveyed keeping in view the fact that it was not fair to compare the facilities available for extraction of timber in Assam Forests to those in NEFA.

(f) The revised rates of royalty were being charged with effect from 1-10-59. The Company had been paying royalty at the enhanced rates w.e.f. 1-10-60, the amount from 1-10-59 to 30-9-60 being allowed to be paid in three annual instalments The first instalment of Rs. 21,142.13 had already been paid. The balance would be paid by the Company by 31-3-1965 and 31-3-66.

(g) A monopoly fee was to be levied at specified rates subject to the establishment of a permanent road link between Namsai and Railhead w.e.f. 30-9-61. All weather road proposed to be constructed has not yet been completed.

2. For the reasons stated above it is not possible to arrive at the notional loss of Rs. 1.50 lakhs on the basis of the Chartered Accountants' report. The basic consideration is that the results disclosed in the cost accounts were not corborated by the facts shown in the audited financial accounts. It is accordingly suggested that the proposed Draft para may please be dropped.

Yours faithfully,

S. C. DUTTA,

Deputy Secretary to the Govt. of India.

Copy forwarded to:—

1. The Accountant General, Assam and Nagaland, Shillong with reference to his telegram quoted above.

2. Adviser to the Governor of Assam, Shillong.

3. BF. II Section.

S. C. DUTTA,

Deputy Secretary to the Govt. of India.

APPENDIX XIV

Summary of main Conclusions/Recommendations

S. No.	Para No. of Report	Ministry/Department concerned	Conclusion/Recommendation
1	2	3	4
1	1.3	Finance (Deptt. of Revenue)	The Committee would like to be furnished with complete information in respect of the amounts realised out of the under-assessments pointed out by Audit.
2	1.10	—do—	The Committee are glad to note the steps taken to improve the working of the Income-tax Department and the internal audit organisation. They trust that with the enlargement of the scope of internal audit, its effectiveness would improve. The Committee would suggest that the Ministry should consider the feasibility of maintaining in the Central Office or in the Commissioner's office a register showing the nature of audit objections, the officers responsible, the tax effect and the action taken on cases detected by Revenue Audit. Such a register would help the Board as well as to pursue and settle the cases objected to by Revenue Audit at one place. It would also help in keeping a watch over cases which are likely to get time barred with the passage of time.
3	1.11	—do—	The Committee regret to note that the information desired by them in para 3 of their 28th Report has taken the Board 12 months to collect and is still incomplete. This gives the impression that the Commissioners do not act promptly on the instructions of the Board.

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			The Committee hope that steps would be taken to collect the factual information forthwith and supplied to the Committee.
4	1.12	Finance (Deptt. of Revenue)	From the note furnished by the Board of Direct Taxes, the Committee observe that sums of Rs. 15·83 lakhs, Rs. 57·61 lakhs and Rs. 59·83 lakhs were reported to have been recovered out of the under-assessment pointed out in Audit Report for the years 1962, 1963 and 1964 respectively. The Audit pointed out the under-assessment to the extent of Rs. 1·21 crores, Rs. 1;19 crores and Rs. 2·29 crores in the Audit Reports of 1962, 1963, and 1964 respectively. The Committee feel that the Department has not been quite prompt in settlement of the cases of under-assessment pointed out by Audit. During evidence the Committee were informed that still there were 132 cases involving a sum of Rs. 76·12 lakhs in respect of which action had yet to be taken by the Ministry, though more than 12 months had elapsed. The Committee feel that there is a danger of some of these cases getting time-barred. The Committee desire that the Board should first clearly decide whether the audit objections raised on different cases of under-assessment are to be accepted and if so, demands should be raised well in time in order to prevent these cases from getting time-barred. They desire that the Commissioner of Income-tax and the Board should keep a watch over the cases of under-assessment, so that the amounts under-assessed are realised promptly. In this

connection, the Committee were concerned to learn that the work-load of I.T. officers had further increased in 1964-65. The average disposals from I.T.O. in 1964-65 was 1293 cases as against 1003 cases in 1962-63. The Committee would also like to reiterate the recommendation made by them in para 3 of their 28th Report regarding reducing the work-load of income-tax officers with a view to obtaining the optimum efficiency and also the desirability of investigating in detail the cases involving an under-assessment beyond a certain amount.

5	1.19	—do—	The Committee regret to note that this calculation mistake committed by the UDC escaped notice of not only by the I.T.O. but also that of Internal Audit Party. It appears that even the Internal Audit did not check arithmetical calculation which was one of their main duties to do, as otherwise this should have been detected by them and it was only when this case came to the notice of the Revenue Audit that the under-assessment came to light. The Committee feel that all the persons involved in this case *viz.* the UDC, ITO and the Internal Audit Party were negligent. The Committee note that the UDC and the Internal Audit Party had been warned in this case and that the mistake in calculation has been rectified and the necessary demands issued. They would, however, recommend that learning from this case the Board should examine the desirability of eliminating the paise and introducing the system of rounding off of the amounts to the nearest rupee in such cases in order to minimise the risk of wrong calculation in future.

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6	1.24	Finance (Deptt. of Revenue)	The Committee are surprised to note that in this case, the I.T.O. took the hasty step of trying to rectify the mistake without reference to records and in the process committed another mistake. While the Committee note that the Department has since recovered the amount of under-assessment, they would impress upon the Board to instruct the officers to exercise greater vigilance and caution. They also trust that with extension of scope of internal audit, such cases will not recur.
	1.26	—do—	The Committee would like to reiterate the recommendation made by them in para 29 of their 28th Report (Third Lok Sabha) that since calculation of depreciation allowance is complicated, the Department should give adequate training in this respect to the staff in company circles so that such mistakes are eliminated.
	1.27	—do—	The Committee would also like to be informed whether I.A.C's. explanation has been received and whether it has been found to be satisfactory.
	1.35	—do—	While the Committee observe from the note that the relief given by the ITO was strictly according to the letter of the law, as it stood then, and he applied it uniformly in all cases, they feel that the time-lag between the enforcement of the original Act and its amendment for the purpose of removing the defect in the wording of the relevant section was inordinately long.

9	1.38	—do—	The Committee consider it a serious matter that although the Internal Audit Party checked one of the two cases involving an under-assessment and pointed out the mistake in middle of 1962, necessary action to rectify the assessment was not taken until it was again pointed out by Revenue Audit in January, 1964. The Committee hope that suitable steps would be taken to ensure that prompt action is taken to rectify mistakes as soon as they are detected by any agency.
10	1.41	—do—	The Committee regret to note that the incorrect exemption given in this case resulted in an under-assessment of tax to the extent of Rs. 28,200 and that 4 Income-tax officers did not detect this under-assessment. It appears that the assessments were made in a routine manner by all the officers. This also resulted in a loss of revenue of Rs. 10,726 for the assessment years 1958-59 and 1959-60 on account of time-bar. The Committee would also like to be informed of the recovery of Rs. 2,892 relating to the demand for the year 1962-63.
11	1.45	—do—	The Committee note that the mistake in this case has been rectified and the full amount due recovered. They would, however, like to point out that such mistakes are mainly due to the complicated nature of the tax laws which are subjected to changes every year. These changes are confined not only to the rate of tax, but even the structural changes are made frequently. The Committee appreciate that in a growing economy appropriate changes in tax structure some-

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			times do become inevitable. They, however, feel that the basic change in the scheme of the Act must be avoided as far as possible. That also feel that an attempt should be made to simplify the taxation law as far as possible and that the changes in the taxation laws should thereafter be kept to the minimum necessary.
12	1.48	Finance (Deptt. of Revenue)	The Committee hope that care will be taken to avoid such mistakes in computing of income in future.
13	1.51	—do—	It is learnt from Audit that the local audit Memo was issued on 29-8-1963 and the draft report was discussed on 9-9-1963. The appeal was disposed of on 28-9-1963. The report received by tho I.T.O. on 11-10-1963 was the formal inspection report. Therefore there was adequate time for the I.T.O. to ask for enhancement on the basis of the local audit memo which he had received in August 1963 itself before the A.A.C. disposed of the appeal. The Committee regret that this has not been done. This failure reflects an apathy on the part of the I.T.Os in regard to points raised in audit.
14	1.53	—do—	The Committee hope that with the amendment of Section 154 of the Income-tax Act, such losses of revenue would be avoided, as it confers powers on the Government to rectify mistakes by ITOs even where an order has been passed by the Appellate Assistant Commissioner.
15	1.63	—do—	The Committee would like to know the circumstances under which the Commissioner of Income-tax made reference to the High Court

that royalties and dividends should be regarded as capital expenditure, when the Board's circular was to the contrary.

16 1·68 Do.

The Committee dealt with in some detail the mistakes resulting in wrong computation of depreciation and development rebates in para 24(a) and in para 29 of their 28th Report (Third Lok Sabha). They regret to note that the number of cases in which mistakes were detected in computing depreciation and development rebates admissible, increased to 2,089 involving an under-assessment of tax to the extent of Rs. 75·97 lakhs as against 574 cases in 1963, involving an amount of Rs. 29:13 lakhs and 678 cases in 1964, involving an amount of Rs. 33·83 lakhs. Even during evidence the witness stated that a review of such cases in the city of Bombay has brought out mistakes in 912 cases out of a total of 6,822 cases reviewed. The amount involved in these 912 cases was Rs. 24·23 lakhs. In view of the result of review in Bombay the Committee suggest that the Board should get special review conducted in all other charges also. They would like to be informed of the results of such a special review.

17 1·69 Do.

Since the numerous mistakes take place in calculation of the development rebate and depreciation allowances which result in an under-assessment, the Committee suggest that (a) suitable instructions containing comprehensive details should be issued to all the Income-tax Officers for calculation of these rebates and allowances, (b) training should be given to the field staff in making such calculations.

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18	1·72 & 1·73	Finance (Deptt. of Revenue)	The Committee are not convinced by the explanation given by the Department for this error. Where there is a dispute or absence of information in regard to the figures of actual cost of written down value, it is understandable that the figures are taken provisionally, subject to revision later on. But where a particular asset is not at all entitled to depreciation allowance or extra shift allowance, such as those referred to in this case, it is not understood how a provisional depreciation or extra shift allowance was at all given. It appears that the Income-tax Officer had not looked into the nature of assets. The Committee note that this assessment has been set aside on appeal. They would like to be informed whether the mistake has been rectified in the re-assessment and tax due recovered.
19	1·76	Do.	(i) The Committee are greatly surprised to note that the mistake of allowing a higher rate of depreciation on machinery went on undetected for almost 22 years and was noticed only when pointed out by Audit. They would desire that responsibility should be fixed for the loss of revenue resulting from the rectification of the mistake in the assessments earlier to 1957-58 having become time-barred. If depreciation was allowed at 20%, as was done by the ITO who originally committed the mistake in 1943, the entire machinery would have been written off in 5 to 6 years and the succeeding ITOs should have realised the mistake while calculating depreciation on new machinery,

(ii) The Committee would like to be informed whether the additional demand raised in respect of assessment years 1957-58 to 1959-60 has since been realised.

20	1·80	Do.	The Committee feel concerned over such costly mistakes committed through oversight by ITOs as occurred in the present case which resulted in non-levy of tax amounting to Rs. 64,332. They desire that the ITOs should be more careful in dealing with assessments involving large amounts of tax with a view to avoiding not only mistakes on points of law, but also those relating to calculations.
21	1·83	Do.	The Committee regret to point out that in this case the I.T.O. made a mistake in not disallowing a clearly inadmissible item of development rebate on a certain asset. It is also surprising that although the Inspecting Assistant Commissioner checked the assessment, he did not go into the accuracy of the arithmetical computation of income. If the inspection by Assistant Commissioners is to be purposeful, they should, while inspecting the assessments, besides going into the legal points, also ensure that the arithmetical calculations are correct, especially in the case of companies, when large amounts are involved.
22	1·87	Do.	The Committee regret to find that in this case the clear provisions of the Income-tax Act were ignored by the Income-tax Officer, resulting in an under-assessment of Rs. 24,065. They hope that such mistakes would be avoided in future.

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23	1·91	Finance (Deptt. of Revenue)	The Committee takes serious note of such omissions in determination of the income in case of firms. It is unfortunate that even though the department had a system of internal audit, this aspect was outside their scope at that time. The Committee hope that with the extension of the scope of Internal Audit such mistakes will not go undetected by them.
24	1·97	Do.	In view of the fact that two contradictory opinions have been expressed by the Ministry of Law in 1959 and 1964, the Committee suggest that the opinion of the Attorney-General may be obtained.
25	1·101	Do.	The Committee feel concerned over such omissions of the Income-tax Officers as occurred in the present case in respect of the assessment years 1955-56, 1956-57 and 1957-58. The Income-tax Officer failed to notice that the firm's application for registration was not complete in as much as it had not been signed by all the adult partners of the firm and granted registration for the years without having this requirement fulfilled. What is more serious, although the officer who scrutinized the application for the assessment year 1958-59 did detect the mistake, he took the extreme step of refusing renewal of registration for want of this rather technical requirement and assessing it as an unregistered firm. He should better have asked the firm to get the application signed by all its adult partners.

This omission on the part of the I.T.O. resulted in the case going before the tribunal and hardship to the firm.

26 I·102 Do.

The Committee are glad to note that the Income-tax Act, 1961 contains a provision that an I.T.O. should not reject the application merely on the ground that the same was not in order, but he should give sufficient opportunity to the assessee to rectify defects within one month. The Committee understand that the Board have also issued instructions in 1961 that if the technical defects were of the nature that could be removed, these should be got removed. But what the Committee are anxious about is that this liberalisation envisaged in the Income-tax Act and instructions should actually be observed in letter and spirit by the I.T.Os., so that the intention of the Parliament may be implemented and undue hardship to the assessees avoided. The Committee would like the Board to take effective steps to ensure that the spirit of the Act as well as instructions of the Board in this respect are precisely observed.

27 I·109 Do.

The Committee feel concerned about the practice adopted by the assessee in this case to circumvent the levy of capital gains tax while submitting his income-tax return by undervaluing the shares sold to his own relative. In his return for Wealth Tax submitted earlier and subsequently, the shares were assessed at a much higher value (about double the face value). Similar cases of undervaluing assets in income tax returns were reported in para 34(b) of the Audit Report (Civil) on Revenue Receipts, 1963. The Committee suggested that a suitable procedure should be adopted by the

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			Department whereby assessment of both the income tax and wealth tax is done simultaneously so that the I.T.O. should be able to correlate the value of assets disclosed in the two returns.
28	I III	Finance (Deptt. of Revenue)	The Committee are surprised to learn that wealth tax, Gift Tax and Estate duty which are also direct taxes have not yet been authorised by Government for being brought under the purview of Revenue Audit. The Committee feel that this should have been done simultaneously when Revenue Audit was extended to Income Tax. The receipts from these taxes are increasing and it is also necessary to correlate the data given in income tax returns and other taxes returns to detect malpractices of the kind reported in the present case. In view of the singular service rendered by the Revenue Audit to the assessment and collection of Income-tax customs and central excise, it is the considered opinion of the Committee that the scope of the Revenue Audit should be suitably extended forthwith so as to include all the central taxes without any distinction and reservation.
29	I·II5	Do.	The Committee regret to note that in the present case neither the I.T.O. who made the assessment, nor the Inspecting Asstt. Commissioner who checked it, was able to detect that a clear item of business profit was shown as a capital gain. This indicates that scrutiny made by the two officers was perfunctory. The Committee desire

30	1·118	Do.
31	1·122	Do.

that the officers should be more careful while scrutinizing the accounts of companies, even though these might have been certified by qualified accountants.

The Committee regret to note that the same mistake, *i.e.*, failure to apply the provisions of the income-tax Act to assess the income of minors in the hands of parents, was persistently committed by nine Income-tax officers, over a period of eight years from 1947-48 to 1955-56. Once the mistake occurred, the succeeding officers repeated it without independently going into the basis of assessment. It is most unfortunate that inspite of this Board telling their officers repeatedly not to follow the basis of the earlier assessment a mistake like the present one has happened. This shows the routine or casual treatment which is given to the Boards instructions/advice. The Committee suggest that based on the defects noticed in this case suitable instructions may be issued to all I.T. officers to be more careful in such cases. The Committee would also like to know the result of the appeal made by the Department.

The Committee are surprised that in 1953-54 the Commissioner at his own level gave a ruling that the ladies in question were not wives of the assessee but 'ladies in position'. As the case was complicated and unique, without any parallel, and also involved a large amount of revenue, the officer should have referred it to the Board and the Law Ministry. This omission on the part of the officer has resulted in jeopardising considerable revenue (Rs. 38,496) for the years 1951-52 to 1954-55, the assessments for which have become

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			time-barred, and Rs. 996 928 for the subsequent years 1955-56 to 1958-59.
32	1·123	Finance (Deptt. of Revenue)	The Committee would like to know the outcome of writ petition filed by assessee in the High Court challenging the jurisdiction of the I.T.O. to reopen the assessments for 1955-56 to 1958-59 involving tax effect of Rs. 9,96,928.
33	1·130	Do.	The Committee feel concerned to note that even though these cases of allowance of insurance rebate were not to complicated, there appeared to be a general type of mistake committed by the I.T.Os, as judged from occurence of 155 defective cases out of a small number of cases checked in test audit in the charges of only 16 commissioners. The Committee hope that with the simplification of the law by providing for straight deductions instead of rebates, the mistakes would be substantially reduced, if not completely eliminated. The Committee suggest that the matter should be kept under review with a view to introducing further simplication in procedure, if necessary. For this purpose it would be desirable that some percentage of cases is checked by the Internal Audit also.
34	1·132	Do.	The Committee find it surprising that in these 40 cases, rebate was allowed on the amount in excess of the sum claimed by the assessees. They hope that these cases will be scrutinized carefully and action taken against the delinquent officers.

35	1·137	Do.	The Committee regret to note that this is another case where although a difficult point was involved, the I.T.O. did not consider it necessary to refer the matter to the higher authorities before completing the assessment of a big company like the one in the present case for the years 1957-58 to 1960-61. What is more regrettable is that even after the Board issued a circular in 1961 containing comprehensive instructions regarding computing of capital employed in an undertaking, the I.T.O. made the same mistake in January, 1962 while making the assessment for the year 1961-62. The mistake made in 1961-62 merits serious notice. The Committee also view with concern the omission on the part of the Inspecting Asstt. Commissioner who looked into some of these assessments, but did not report anything. But for the point taken up by Audit, a tax revenue of Rs. 3·80 lakhs would have remained unrealised in these two cases of companies and Rs. 3·92 lakhs in the case of shareholders. The Committee suggest that the Board of Direct Taxes should take a serious view of such omission and cases involving an under assessment of tax of Rs. 10,000 or above should be investigated in detail with a view to remove any defects in procedure as also to see that no malafide was involved. They should also fix responsibility for such lapses.
36	1.139	Do.	The Committee desire that the performance of the Income Tax officers in company circles should be assessed from time to time in order to apply any further correctives.

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37	1·144	Finance (Deptt. of Revenue)	The Committee regret to note that although in each of these three cases, the excess refund involved was more than Rs. 1 lakh, the calculation was not checked by the I.T.O. concerned as required under departmental instructions and the mistake remained unnoticed for about 30 months, till it was pointed out by Audit. The Committee hope that the I.T.Os will strictly observe the instructions issued by the Board in July, 1964 that in all cases where refund granted as a result of revision of assessment consequent on an appellate order exceeded Rs. 1 lakh, the I.T.O. should obtain prior approval of the Inspection Asstt. Commissioner and such cases of large excess refuns will be strictly avoided. The Committee suggest that the Inspecting Asstt. Commissioner should specifically check during these inspections as to how far the departmental instructions were carried out by the Income Tax Officers so far as assessment of taxes was concerned. Failure to carry out departmental instructions should be viewed seriously. The Committee also desire that adequate action should be taken against the I.T.O. for his negligence and failure which jeopardised the Government revenue to this large extent.
38	1·148	Do.	The Committee consider it unfortunate that Appellate Asstt. Commissioner mentioned the figure of development rebate as Rs. 34·98 lakhs instead of Rs. 26·90 lakhs. What is more regrettable is that

			the I.T.O. who had himself earlier corrected the arithmatical error of a sum of Rs. 8·08 lakhs having been added twice ever did not check up the amount of allowance while giving effect to the order of the Appellate Asstt. Commissioner, and this resulted in an excess refund of Rs. 5:08 lakhs. The Committee are surprised to know that although this case related to a big company involving a substantial amount of refund, it was neither checked by the Internal Audit Party nor the Inspecting Staff .
39	1·151	Do.	The Committee regret to observe that in this case the orders of the Appellate Tribunal were not properly given effect to resulting in an underassessment of tax to the extent of Rs. 19,412. The Committee consider it very unsatisfactory that the I.T.O. who committed the mistake was so much over-burdened with work at the particular time that he had to hold five important charges. The Committee hope that suitable administrative arrangements will be made to avoid such instances in future.
40	1·154	Do.	The Committee feel concerned over the mistakes made by the I.T.O. in the levy of additional super tax involving short-levy of tax to the extent of Rs. 3,14,756. It is regrettable that the Assistant Commissioner who checked up this case, could not detect the mistake, although it involved a question of application of law. The Committee hope that the Central Board of Direct Taxes would take suitable steps to ensure that such mistakes are avoided in future.

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41	1·158	Finance (Deptt. of Revenue)	The Committee regret to observe that the incorrect notice issued by the Income-tax Officer to the company to declare further dividends resulted in clear loss of revenue to the extent of Rs. 47,900.
42	1·159	Do.	In their earlier Reports (Para 53 of 21st Report and para 41 of 28th Report—Third Lok Sabha), the Committee have adversely commented upon non-levy of additional super-tax under Section 23-A of the Income-tax Act, 1922 and desired that the procedure should be tightened, and the Board should keep close watch on the position. The Committee are concerned to find that the Audit Report, 1965 had also disclosed under-assessment of super tax of Rs. 25·57 lakhs involved in 80 cases. The Committee would like to know about the action taken by the Board of Direct Taxes to tighten the procedure with a view to eliminate such cases.
43	1.170	Do.	(i) The Committee feel that this was a deliberately devised and planned scheme to evade tax and defraud the Government. They also feel that special care is necessary in assessing the companies of this group and there should be proper coordination between the I.T.Os. dealing with them. (ii) The Committee regret to note that in this case there was failure on the part of the I.T.O. who assesses the company declaring the dividend to verify that the company had filed a statutory return

to this effect as required under the law. The officer also failed to inform the I.T.O. assessing the other companies to whom shares were transferred about the declaration of dividend. The result was that the I.T.O. assessing company No. 3, in whose name the dividend stood credited on the crucial date and whose books were with the Special Police Establishment, was not aware of the declaration of the dividend while making the assessment on the basis of the previous year's income. It is also regrettable that the I.T.O. assessing the third company made unnecessary hurry in completing the assessment without looking into the books of the company which were with the SPE. It is surprising that the SPE kept the books for seven years from September, 1955 to September, 1962. It is also surprising that the I.T.O. made no efforts either to obtain copies of relevent entries or even to inspect the books while they are in the SPE's custody.

(iii) The Committee note the remedial action taken by the Deptt. to establish better coordination among I.T.Os in communicating the information about the declaration of dividends. Further, the companies controlled by the same group are concentrated in the same charge at various stations. The Committee desire that Government should consider what further measures are necessary to prevent recurrences of such cases. They would also like to know the outcome of the present case. The Committee suggest that necessary investigation should be made to discover the possibility of collusion between the assessee Group of companies and the revenue officers.

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			(iv) The Committee also suggest that cases pertaining to the other companies of this group referred to in this case should be reviewed.
44	1 77	Finance (Deptt. of Revenue)	The Committee are not happy over the delay in the disposal of the appeal filed by the assessee in this case, resulting in a large amount of demand (Rs. 3·18 lakhs) outstanding. They hope that the Commissioners will strictly follow the recent instructions of the Board that where substantial amounts were involved pending decision on appeals, the Appellate Assistant Commissioner would take up such cases quickly.
45	1 81	Do	(i) The Committee regret to observe that this is a clear case of omission to tax the income when all the facts were available on record. The Committee rather feel concerned over such omissions occurring in the Special Investigation Circles who have to deal with comparatively less number of cases.
	1·81	Do	(ii) In the present case before the I.T O. relinquished charge in April, 1962, he should have mentioned in detail the action required to be taken to his successor, so that the assessment for the year 1956-57 could be reopened. This apparently was not done. It is all the more regrettable to note that the same I.T. Officer was concerned with an other case involving an under assessment of Rs. 67,000. The Committee suggest that this case may be investigated in detail with

a view to fixing responsibility, and taking disciplinary action against officers concerned.

46 1·194 Do.

(i) The Committee regret to note that in the case of the first Company the Income-tax Officer failed to gross up dividends correctly, though the assessment records of the company declaring dividends were available in the same income-tax office. What is more serious is that although the percentage of taxed profits was indicated as 'nil' in the dividend warrant filed by the assessee for the year 1959-60, the ITO concerned grossed up the net dividend by taking 100 per cent of profits as taxable. The lapse on the part of ITOs resulted in excess credit of Rs. 2,36,344 in respect of the years 1955-56 to 1959-60, a part of which has become a loss as the rectification of assessments had become time-barred.

1.195 Do

(ii) Another unsatisfactory aspect of this case is that there was delay in investigating into this after it was brought to the notice of the Board by Audit. The Committee would like to know about the action taken against the company for filing false certificates and also against the ITO for his omission. The Ministry should also examine what further remedial measures are necessary to guard against the share holder filing false returns.

1·196 Do

(iii) The Committee would like to know the outcome of the appeal filed by the C.I.T. before the tribunal.

1·197 Do

(iv) The Committee are surprised that the Internal Audit Party did not even check that the I.T.O. had got the certificates furnished

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			by the Companies verified. The Committee were informed that instructions would be issued to the Internal Audit to conduct this type of examination. They trust that in future the Internal Audit would be careful so that such mistakes may not go undetected.
47	1·204	Finance (Deptt. of Revenue)	(i) The Committee are unhappy to note that inspite of their earlier recommendations [para 66 of 21st Report (Third Lok Sabha) and para 44 of 28th Report (Third Lok Sabha)] there had been omission to levy penal interest. Out of the 317 cases reported in the audit para, in five cases alone the penal interest omitted to be levied was about Rs. 3.19 lakhs. This resulted to the loss of revenue to Government as in one case Rs. 50,475 were waived and in another case Rs. 72,329 could not be rectified because of time bar. The Committee desire that such lapses should be strictly avoided and penal interest, wherever leviable should be levied, unless waived by the competent Authority, for adequate reasons to be recorded.
	1·205		(ii) During evidence, it was stated that instructions had been issued to Commissioners of Income-tax to ensure that penal interest would be levied in all the cases wherever it was leviable. The ITOs had also been asked while making assessment, to look into the earlier assessment also and to see whether there had been any mention of it in earlier year also. They hope, that with the issue of these instructions, such lapses will not occur in future.

48	1·211	Do	They regret to note that such a glaring mistake had taken place and yet it was not detected at any level in Income-tax Deptt. It is surprising that even though this irregularity was pointed out by Audit in June, 1962, yet the Commissioner who was looking into the case had not submitted his final report. The Committee desire that the report in this case should be finalised early and suitable action should be taken against persons responsible for the lapses.
49	1·219	Do.	(i) The Committee are not happy over the cases of over-assessments which are as serious mistakes as under-assessments. The Committee feel that for no fault on the part of the assessees, they had been penalised. The Committee take a serious view of the cases of over-assessments which have become time-barred.
	1·220		(ii) The Committee appreciate that in order to avoid assessments becoming time-barred after four years, the Internal Audit is arranged in such a way that assessments are checked within a period of three years so as to allow one year for rectification. But at present the Internal Audit Parties checked only a limited number of assessments and even out of a few cases checked by them in some cases mistakes escaped their notice. The Committee, therefore, feel that remedy lies in improving the efficiency of the assessing machinery and the vigilance by the Internal Audit Deptt.
50	1·224	Do.	The Committee are sorry to note that the Central Board of Revenue issued a circular in November, 1962 giving a concession to the

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			cooperative banks, which had not been authorised by Parliament in the way it was given. In evidence, it was admitted that the way the instructions were issued by the Deptt. of Revenue was wrong. The Committee note that the law has since been suitably amended to fill up this lacuna. The Committee trust that the Board would review their instructions if not already done, in the light of the amended law.
57	1·229	Finance (Deptt. of Revenue)	The Committee note the stand taken by the Ministry. However, the Committee have come across several instances, where instructions have been issued and because of Audit subsequently objecting to them, the Government had to withdraw or change those orders. It seems to the Committee that instead of starting on wrong lines and rectifying them later, it would be advantageous to all concerned to have a second check to ensure that the instructions issued are well within the four corners of the law and the rules. On a consideration of the cases before them, the Committee are satisfied that it would be better if instructions relating to the interpretation of the Act are issued in consultation with the Comptroller and Auditor General. This precedure need not, of course, extend to Administrative instructions with which the C. & A. G. is not generally concerned. The Committee would accordingly urge the Government to reconsider the matter.

52	1·23	Do.	The Committee feel concerned over the type of mistake committed by the assessing officers in these three cases, even though they were dealt within company circles where generally efficient officers are posted. The concerned officers included in the computation of capital 'provision for taxation' and 'provision for dividends', neither of which could be construed as reserve, being the amounts set apart to meet specific liabilities known to exist on the date of the balance sheet. This resulted in short levy of tax amounting to Rs. 1,41,700 which was realised after being pointed out by Revenue Audit. The Committee were informed that, at present, it was beyond the scope of the Internal Audit to check computation of the capital. The Committee were, however, assured that the Internal Audit Deptt. would now be instructed to check up the super profit tax cases also. The Committee desire that suitable instructions extending scope of Internal Audit to such cases may be issued and the cases already completed may also be reviewed.
53	1·241	Do.	From the statement furnished to them, the Committee regret to note that there was inordinate delay in making assessments, which ultimately resulted in writing off of the tax demands. In some cases assessments were completed after the companies had gone into liquidation. The Committee emphasize the need for making timely assessments and recoveries in cases of companies involving large tax liabilities, as delay in such cases is fraught with risks of huge losses to Government. The Committee also suggest that in future, cases of

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			abnormal delays in making assessments should also be investigated with a view of finding out the failure of the Departmental officers.
54	1·246	Finance (Deptt. of Revenue)	(i) The Committee regret to note that the tax liability of Rs. 22.67 lakhs created initially was over estimated and that "if over-assessment and over-lapping additions were set right, the tax-demand of Rs. 22,89,867.45 could be fixed at Rs. 7.74 lakhs." The Committee emphasize the need for curbing the tendency on the part of officers to inflate the assessments as such a tendency would result in undue hardship and harassment to the assessees.
			(ii) It is also surprising to the Committee that in the present case even after the net liability was fixed at Rs. 7.44 lakhs, the Special Committee while analysing the liability of the assessee again took the tax liability as Rs. 22 lakhs against the assets of Rs. 15 lakhs. Ultimately, however, the Special Committee came to the finding that if the assessee paid a sum of Rs. 3 lakhs, the settlement would be fair and reasonable. The Committee do not find adequate justification in settling the tax liability of the assessee at Rs. 3 lakhs when the assessee had property worth Rs. 15 lakhs. In their opinion Government should have realised Rs. 7.44 lakhs which was considered as reasonable assessment.

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			that as a result of the instructions issued recently after consultation with the Comptroller & Auditor General, to write off inflated demands partially leaving a sufficient margin for recovery, the arrears would be substantially reduced. The Committee desire that the process should be kept under review. The Committee also recommend that at the time of agreeing to scale down the demand which is accepted as inflated, full payment of the balance or security in lieu thereof should as far as possible, be insisted upon. Then, the inflated portion of the demand as well as the correct amount of arrears would disappear. They would watch the results through future Audit Reports. (iv) The Committee feel that the root cause of inflated demands *i.e.* over-assessment by the ITOs should be effectively dealt with. They were informed during evidence that it had been impressed upon the officers that over-assessment was worse than under-assessment; but that the introduction of a system of evaluating the work of individual officers on the basis of a record of over-assessments or under-assessments was a very complicated question, which had to be considered much more carefully. The Committee hope that some more effective procedure would be devised with a view to ensuring that reasonable demands are raised by the ITOs, and any tendency towards over or under-assessments is rooted out.
57	1·260	Finance (Deptt. of Revenue)	The Committee would like to know the results of their examination,

58	1·263	Do.	The Committee feel concerned to find that the number of pending appeals increased from 74,120 as on 31-3-1963 to 84,736 as on 30-6-64 and 1,16,356 as on 1-9-1965. This indicates that the position has been steadily deteriorating. The oldest case relates to 1953-54. In their 21st and 28th Reports (3rd Lok Sabha) the Committee had observed that early and adequate action should be taken to bring down the arrears with the Appellate Asstt. Commissioners so as not to exceed four months work load, as suggested by the Direct Taxes Administration Enquiry Committee. The Committee hope that with the proposed increase in the number of Appellate Asstt. Commissioners, the number of appeals pending disposal would be reduced and special attention would be given to dispose of old outstanding appeals which have been pending disposal since 1953-54. The Committee also suggest that the number of the Appellate Asstt. Commissioners should be increased to the sanctioned strength without any further delay.
59	1·269	Do.	(i) The Committee regret that the percentage of disposals of assessments had been progressively declining from 1959-60. The percentage has declined from 69.6 in 1959-60 to 54.7 in 1963-64. The pending assessments have increased from 5,08,777 at the end of 1959-60 to 12,26,406 at the end of 1963-64. (ii) They trust that with the proposed addition of 300 Income-tax Officers and introduction of mechanisation, the position will improve. The Committee hope that the Board will carefully examine various aspects while planning the assessing machinery, so that the past arrears and increasing future assessments are tackled

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			effectively. In this connection the Ministry should also examine the feasibility of laying down targets to complete the arrears of assessments. The Committee would like to watch the progress made by the Department of Revenue in this direction through future Audit Reports.
60	1·274	Finance (Deptt. of Revenue)	The Committee are not satisfied about the progress of disposal of super profit tax assessments. They desire that vigorous efforts should be made to expedite the final assessments. At the same time, utmost care should be taken in dealing with these complicated cases involving large amounts of tax.
61	1·280	Do.	The Committee feel concerned over the delay in disposal of applications for refund. 862 applications for refund involving a refund of about Rs. 6,57,000 are outstanding for more than a year. The Committee desire that necessary steps should be taken to expedite disposal of applications for refunds. The Ministry may also consider if it is necessary to simplify the procedure in this regard.
62	1·285	Do.	(i) The Committee are alarmed at the amount of concealed income (Rs. 100 crores) disclosed as a result of about 600 raids and searches carried out by the Department. The largest amount involved in a single case was Rs. 1 crores. The Committee feel that

the existence of large scale concealed income indicates that the Income-tax Department has not been fully effective in assessing the income correctly and preventing their concealment. The Committee suggest that immediate steps should be taken by the Government to devise means to prevent such concealment and evasion of taxes.

1·286 (ii) The Committee are glad to note that Ministry is looking into the question of introducing organisational and legal changes in consultation with experts to make prosecutions more effective and that officers have also been sent to the U.S.A. for training in this particular aspect. The Committee hope that the matter would be kept under constant review.

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63 2·7 Transport and Aviation (Deptt. of Transport, Shipping and Tourism)

Delhi Administration.

The Committee consider it very unfortunate that a serious mistake cropped up while drafting the Delhi Motor Vehicles Taxation Act, 1962. What is more serious was that officers concerned while giving effect to the provisions of Act as passed by Parliament failed to implement the provision regarding levy of tax at the rate of Rs. 100/- for every tonne part thereof on all vehicles with a laden weight exceeding 10 tonnes. The Committee take a serious note of the action of the officers which was not in conformity with the provisions of the Act as passed by the Parliament.

2·8 The Committee were given to understand that an enquiry had been ordered in the case. The Committee understand from the

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			Delhi Administration that a result of the enquiry made into this, action is being taken against the officers concerned who have been found negligent in performance of their duties. The Committee desire that the Acts of Parliament once passed must be implemented by executive without any change or modification by themselves. If they find any mistake or 'absurd' situation arising from implementation, they must come to Parliament for the necessary correction. The Committee also hope that the officers concerned with the drafting of various bills having financial implications would give utmost care in embodying the intentions of Government therein before bringing them to Parliament.
64	2.13	Transport and Aviation (Deptt. of Transport, Shippig and Tourism) Delhi Administration.	The Committee are not happy over an Automobile Association exercising the powers of a Motor Licensing Officer for the years, 1962-63 and 1963-64 without any notification by the Chief Commissioner empowering it to do so as required under the Act. The Tax collected by the Association amounted to about Rs. 4·16 lakhs and Rs. 5·79 lakhs during 1962-63 and 1963-64 respectively. Notification authorising the Association to collect the tax was issued by the Chief Commissioner only on 26th February, 1965. Even no security was obtained from the Association till March-April, 1965. (According to Audit, the security actually obtained from the Association was: Ten Year Defence Deposit Certificates, Rs. 22,000; cash, Rs. 3,000; and Bank guarantee which was under consideration of

			Ministry, Rs. 12,000). The Committee are surprised to find that the financial interest of Government was not safeguarded during this period.
			The Committee are not convinced of the reasons for the delay in drafting the agreement with the Automobile Association. In all cases where the financial interests of Government are involved in transactions with private bodies, agreement should be finalised in advance. The Committee hope that in future such cases will not occur.
65	2.18	Transport and Aviation (Deptt. of Transport, Shipping & Tourism)	The Committee feel concerned over the delay in finalising the question of obtaining security from the cashiers who handled the large amounts of cash ranging upto Rs. 78,000 per day. They desire that final decision should be taken in the matter without further loss of time. The Committee are surprised that the Government should not have agreed to pay Rs. 10 towards fidelity bond. The Committee cannot understand why Clerks utilised to work as Cashiers should be penalised for this work.
66	2.22		(i) The Committee feel concerned over the persisting non-observance of the rules regarding authentication of individual entries by the Motor Licensing Officer, checking of the totals of subsidiary cash books etc.
	2.23		(ii) They are surprised how, in the absence of authentication of individual entries by the Motor Licensing Officer and checking of totals of subsidiary cash books, it was ensured that there was no leakage of revenue.

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	2·24	Transport and Aviation (Deptt. of Transport, Shipping & Tourism)	(iii) The Committee desire that the staff should be adequately augmented as necessary to cope with the work as the non-observance of the rules in this behalf is likely to result in defalcations, losses etc.
67.	2·28	Do.	The Committee feel concerned to note that a test check of one month's account showed 23 cases of shortages of cash and 13 cases of cash in excess. This points to the need of having daily reconciliation, as prescribed under the rules, between the total amounts for which the tax token, permits, etc. had been issued and the total amount collected in cash by cheques and by deposits into Treasury etc. They desire that adequate staff should be provided for doing this reconciliation work.
68	2·34	Do.	The Committee regret to note that there is no effective machinery in Delhi to assess the demand of tax on motor vehicles and to watch its recoveries. The Committee desire that the system followed in other States especially in Bombay city and Calcutta city should be studied with a view to devising an effective machinery in Delhi without adding much to the cost of collection.
69	2·38	Do.	The Committee emphasize the need for introducing a system of internal check in the Deptt. in order to prevent and detect errors and irregularities in the financial proceedings of the subordinate

			officers. They desire that the necessary action should be taken to provide adequate (accounts-knowing) staff in the Department.
70	2·48	Home Affairs NEFA Administration	The Committee are surprised to know that because of change of Administration only, there was a delay of 10 years in finalising the agreement between the Administration and the company. The Committee feel that a delay of 10 years in finalising an agreement with the company cannot be justified on any account. In the absence of any agreement in force, the Administration had to act on the provision of the old agreement which was not legally binding on any of the parties. The Committee desire that the circumstances leading to such delay in renewing the agreement be examined with a view to fixing the responsibility.
71	2·51	Do.	The Committee cannot approve of this *ad hoc* method of a private company working Government properties without any valid agreement but merely on mutual understanding as in the opinion of the Committee such a procedure is not only irregular but also fraught with risks and should always be avoided.
72	2·55	Do.	The Committee regret to note that the Assam rates of royalty which were followed by the NEFA Administration upto 30th September, 1956 were given up without any reason w.e.f. 1st October, 1956. Further, the profitability of the company and consequently its capacity to pay the enhanced rates was not investigated at the time when the royalty rates required revision w.e.f. 1st October, 1957 and when this was investigated in August, 1960 by

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			the Chartered Accountants it was found that the plea of the company that they were unable to pay enhanced rate of royalty due to the fact that they were incurring loss even on the old rate of royalty, was found to be incorrect. It is all the more surprising that when the Administration increased the rate of royalty from 11¼ annas to Re. 1 w.e.f. 1st October, 1959, they went only by the figures which the company had given regarding extra expenditure incurred by them, and the Administration accepted those figures without any verification. The Committee cannot therefore, view with equanimity the various lapses on the part of the Administration *viz*, (i) failure to follow the Assam rates from 1st October 1956 (ii) non-examination of the profitability of the company and not taking action when it was investigated by the Chartered Accountants that the Company was in a position to pay enhanced royalty (iii) acceptance of the figures of extra expenditure furnished by the Company without any verification and (iv) non-checking of balance-sheet of the company with their income-tax return.
73	2 57	Home Affairs NEFA Administration	The Committee are unable to appreciate the action of the NEFA Administration about the fixation of royalty from time to time. There is neither logic nor consistency in the way the royalty has been fixed. The royalty rate was Rs. 1-6-0 per c.ft. from 1st October 1960 to 30th September 1961 with a provision of waiver of 6 annas per c.ft. for lack of road but again from 1st October 1961 to 30th Sep-

		tember 1963, the royalty was Re. 1, while from 1st October 1963 to 30th September 1966, the rate has again been fixed at Rs. 1-6-0 irrespective of absence of road. Although it was stated in evidence that the rate would increase by 6 annas per c.ft. as soon as road was provided, this increase has taken place because of increase in sale proceeds, though the road is not yet there.
74	2·64	Do.	The Committee fail to understand as to why the NEFA Administration considered the market rate of Rs. 3-6-0 per c.ft. adopted by the Chartered Accountant excessive as they themselves had informed the company that the market rate was not less than Rs. 3-8-0 per c.ft. If the Administration considered the rate of Rs. 3-6-0 per c.ft. adopted by the Chartered Accountant as too high, they should have explained the same in detail to the Chartered Accountant giving the reasons therefor. The Committee regret to note that this was not done. The Committee are not impressed by the argument that this rate of Rs. 3-8-0 per c.ft. was a 'negotiating plea'. Since there is nothing to support this argument they feel that this is put forward now to cover up heir lapse.
75	26 68	Do.	(i) The Committee regret to note that while in fixing the royalty rates, the Administration wholly depended on the figures supplied by the company and claims made by them without any complete or proper varifications; they totally ignored the findings of the Chartered Accountant specially appointed by them to look into the affairs of the company.

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	2·69		(ii) What is more objectionable, is the fact that in rejecting the findings of the Chartered Accountant, the Administration took up the argument that the examination was not complete and Government of India justified that action to Audit by criticising the findings of the Accountant, whereas the Accountant was prevented from examining the complete records, being asked not to go to Namsai.
	2.70		(iii) In view of the fact that the Chartered Accountant's report was not acceptable to the NEFA Administration and further in view of the fact that the Administration did not verify in detail the figures of extra expenditure supplied by the company, for determining their claims for royalty, the Committee feel that the working of this contract needs thorough and independent investigation. The Committee, therefore, suggest that the working of this contract should be investigated in detail taking into consideration the records of the Chartered Accountant, the balance sheets of the Company, and the Income Tax returns of the company with a view to finding out whether the rates of royalties were fixed correctly from time to time.
76	2.76	Do.	The Committee strongly deprecate the tendency as has been quite evident in the present case to continue to act on old agreements/contracts wihich had expired without entering into new ones, resulting in a loss of public revenues. They desire that the Minis-

try of Finance should issue suitable instructions on the subject so that this tendency is totally curbed.

77	2.74	Home Affairs NEFA Administration	The Committee suggest that on expiry of this lease, a fresh agreement may be entered into after inviting open tenders. Necessary action in this connection may be initiated well in advace. The rates prevalent in the neighbouring areas of Assam should also be duly taken into consideration when fixing the rate of royalty. The agreement should also include a clause regarding revision of royalty rates at invervals of 3 to 5 years.
78	2.85	Home Affai Delhi Administ at n	The Committee note that out of the arrears of Rs. 54:38 lakhs stated to be irrecoverable, a sum of about Rs. 14 lakhs has been written off so far. The Committee also note that the need for writing of arose because of the bogus dealers coming into existance for the purpose of evading sales tax liability. In this connection the Committee would like the administration to investigate and make special efforts to find out whose nominee these bogus dealers were *i.e.*, who had created them for evading Sales Tax. It is only thereafter that the question of write off should be considered.
79	2.85	Do.	The Committee also desire that the Bill to amend the Delhi Sales Tax Act should be finalised early, so that loopholes in the administration of Sales Tax may be plugged. The Ministry of Home Affairs should also keep under review the question of shifting the burden of sales tax from the last to the first point in respect of more commodities in order to prevent the evasion of tax. The Com-

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			mittee also suggest that a census of dealers registered under the Sales Tax Act should also be taken periodically with a view to detect bogus dealers.
80	2.86	Do.	The Committee note that in pursuance of the recommendations made in para 76 of their 28th Report the Ministry are taking certain remedial measures to prevent accumulation of arrears of sales tax and current demands. They hope that the matter will be kept under review. The Committee would like to watch the progress made in this matter through future Audit Reports.
81	2.90	Food and Agriculture (Deptt. of Agriculture)	The Committee trust that arrears of land revenue would be recovered promptly and that such arrears would not be allowed to accumulate in future.
		Delhi Administration	
82	3.61	Finance (Deptt. of Revenue)	The Committee take a strong exception to the dilution of the authority of Parliament by executive fiat and or to the non-carrying of the intentions of Parliament as per the letter and spirit of law. The Committee desire that the Acts passed by the Parliament should be implemented fully in letter and spirit. If however, some difficulties arise in implementing an Act, the Executive should approach the Parliament promptly with suitably amendments to the statutes. The Committee also desire that the Ministry of Finance should issue suitable instructions in this regard.

83	3·7	Finance (Deptt of Revenue)	Another disquieting feature pointed out by the Committee in paras 3.173 to 3.175 of their 44th Report is regarding lack of uniformity in administration of tax laws. Different officers sometimes give different interpretations of the law with the result that citizens may be taxed differently under the same statute. This obviously amounts to executive discrimination. The Committee cannot over emphasize the basic need of ensuring that under the same statute and at the same time, people are not charged different rates of tax due to different administrative interpretations or other failures.

GMGIPND—LS I—2730 (Aii) LS——24-3-66—1150.